Supreme Court, U.S.
FILED
97-27 JUL 1 1997
No. _____
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

COMMONWEALTH OF VIRGINIA, *EX REL.*,
SECRETARY OF THE COMMONWEALTH,

Petitioner,

v.

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,

Respondents.

On Petition For A Writ Of Certiorari To The Maryland Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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288 pp
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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER FIRST-CLASS MAIL DELIVERY BY THE UNITED STATES POSTAL SERVICE CONSTITUTES A REASONABLY CALCULATED METHOD OF PROVIDING NOTICE FOR PURPOSES OF OBTAINING *IN PERSONAM* JURISDICTION SO AS TO SATISFY REQUIREMENTS OF DUE PROCESS?

II. WHETHER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION REQUIRES A STATE TO RECOGNIZE THE VALIDITY OF AN *IN PERSONAM* JUDGMENT OBTAINED WITHIN A FOREIGN STATE IF ACTUAL NOTICE OF THE FOREIGN ACTION WAS RECEIVED BY THE JUDGMENT DEBTOR, IRRESPECTIVE OF THE METHOD USED TO OBTAIN ACTUAL NOTICE?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the Maryland Court of Appeals were:

1. Gerald P. Miserandino, Defendant, Respondent herein.
2. Karen L. Miserandino, Defendant, Respondent herein.
3. Resort Properties, Inc., Plaintiff, Co-Petitioner herein.
4. Commonwealth of Virginia, *ex rel.* Secretary of the Commonwealth, Plaintiff-Intervenor, Petitioner herein.

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STATEMENT OF JURISDICTION

The judgment sought to be reviewed by this Court was initially entered by the Maryland Court of Appeals on February 12, 1997. (App. at 1.) The Maryland Court of Appeals denied the Petitioner's Motion for Reconsideration of its ruling and entered a Mandate associated with the ruling of February 12, 1997, on April 8, 1997. (App. at 56.)

OPINION BELOW

The February 12, 1997, opinion of the Maryland Court of Appeals, and the correction to page one of that opinion which was filed on April 8, 1997, appears in the Appendix to this Petition for Writ of *Certiorari*. (App. at 1.) The corrected opinion is also reported at 345 Md. 43, 691 A.2d 208 (1997), and is also available on LEXIS at 1997 Md. LEXIS 10. The Maryland Court of Appeals' order dated April 8, 1997, granting the Commonwealth of Virginia's Petition to Intervene but denying the Commonwealth's Motion for Reconsideration appears in the Appendix at 53.

NOTIFICATION

Pursuant to Rule 29.4(c), the Commonwealth of Virginia hereby advises this Court that the constitutionality of a statute of the state of Minnesota, that is, Minn. Stat. § 170.55 (1996), may be drawn into question by this proceeding and, therefore, 28 U.S.C. § 2403(b) may apply.

Accordingly, this Petition for Writ of *Certiorari* will be served upon the Attorney General of Minnesota upon its filing in this Court.

JURISDICTION, AND CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Court has jurisdiction to consider the issues raised in this Petition because such issues and the decision of the Maryland Court of Appeals sought to be reviewed in this proceeding call into to question the constitutionality of a statute of the Commonwealth of Virginia. 28 U.S.C. § 1257. Specifically, the decision of the Maryland Court of Appeals sought to be reviewed in this proceeding calls into question whether Va. Code Ann. § 8.01-329 (1950, 1992 Repl. Vol.), (App. at 77), satisfies the requirements of procedural due process established by the Fifth and Fourteenth Amendments to the Constitution of the United States. (App. at 70-76.) The questions raised by this Petition also draw into question the application of Article IV, § 1 of the Constitution.

STATEMENT OF THE CASE

This request for review arises out of a split decision of the Maryland Court of Appeals which refused to give full faith and credit to a Virginia judgment in the amount of $4,211.82 which was obtained by Resort Properties, Inc. ("Resort") against Gerald and Karen Miserandino ("the Miserandinos") in the Circuit Court of Warren County, Virginia. It is undisputed that Resort used the

procedural mechanism set forth in Va. Code § 8.01-329 in order to obtain *in personam* jurisdiction over the Miserandinos. This provision authorizes service of process on the Secretary of the Commonwealth as the statutory agent of persons who, among other things, conduct business in Virginia, enter into contracts in Virginia or have an interest in real property in Virginia. (App. at 77.)

Pursuant to § 8.01-329, a plaintiff seeking to obtain service upon a non-resident defendant must also submit an affidavit to the Secretary of the Commonwealth setting forth the defendant's last known address. After being served with process as the statutory agent of a non-resident, the Secretary of the Commonwealth is required to send copies of the pleadings which have been served upon her by first-class mail to the defendant's last known address as set forth in the plaintiff's affidavit. Va. Code § 8.01-329. (App. at 77.)

After obtaining the Virginia judgment in accordance with the mechanism set forth in Va. Code § 8.01-329 and described above, Resort recorded its judgment against the Miserandinos in the Circuit Court for Carroll County, Maryland. (App. at 2.) In accordance with Maryland procedure, a clerk in the Carroll County Circuit Court mailed the Miserandinos a notice informing them that a judgment had been recorded against them by Resort. (App. at 2.) Upon receipt of this mailed notice, the Miserandinos filed a motion to strike the entry of foreign judgment. (App. at 2.)

In their motion to strike, the Miserandinos denied that they were ever served with process in connection with the Virginia proceeding. They also claimed that they

had no knowledge of that proceeding until after they received the notice of judgment which was sent to them by the Carroll County Circuit Court. (App. at 2.) In addition, the Miserandinos argued that they lacked sufficient contacts with Virginia to confer *in personam* jurisdiction over them to a Virginia court. The Miserandinos subsequently waived their attack against the Virginia court's assumption of personal jurisdiction over them under Virginia's long-arm statute based upon their alleged "lack of contacts" with Virginia but persisted with their lack of notice allegation.[1]

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[1] Section 8.01-328.1 of the Virginia Code (1950, 1992 Repl. Vol.), Virginia's long-arm statute, provides, in pertinent part, that:

> A court may exercise personal jurisdiction over a person . . . as to a cause of action arising from the person's:
>
> 1. Transacting any businsess in this Commonwealth;
>
> * * *
>
> 6. Having any interest in, using, or possessing real property in the Commonwealth.

Virginia's long-arm statute is set-forth in full in the Appendix. (App. at 74.)

The underlying transaction giving rise to the Virginia judgment at issue in this proceeding involved the Miserandinos' interest in real estate in Virginia and a loan application which the Miserandinos allegedly executed in connection with such real estate. (App. at 3.) The Maryland Court of Appeals correctly recognized that the allegations contained within the Miserandinos' motion to strike were insufficient to raise an actual controversy regarding the basis for the Virginia court's jurisdiction since Resort's claim qualifies as a "specific jurisdiction" case which arose out of a cause of action relating to

The Carroll County Circuit Court initially sustained the Miserandinos' motion to strike, but, after a second hearing, reversed its original decision and recorded the Virginia judgment. (App. at 4.) The Maryland Court of Special Appeals affirmed the Circuit Court's opinion and the Miserandinos appealed to Maryland's highest court. (App. at 4.)

On appeal, the Maryland Court of Appeals considered the arguments of Resort and the Miserandinos regarding the constitutionality of the method of obtaining notice used in the Virginia proceeding, that is, first-class mail delivery by the United States Postal Service. The Maryland Court of Appeals, in a 4 to 3 vote with a vigorous dissent, ultimately concluded that this method, although expressly authorized by statute in the Code of Virginia, did not satisfy the requirements of procedural due process. (App. at 28-29.)

It was not until after the Maryland Court of Appeals reached its decision regarding the first-class mail delivery issue that the Commonwealth of Virginia was made aware of the Miserandinos' case or their challenge to Virginia's long-arm statute and the potential impact of the Maryland court's ruling on the enforceability of judgments obtained pursuant to Va. Code § 8.01-329. (App. at 59.) The ruling was reported in the press as being likely to "wreak havoc" on creditors' practice in Virginia. *See Virginia Lawyer's Weekly*, Vol. XI, No. 39, p. 1 (March 3, 1997). Upon being made aware of the constitutional

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the Miserandinos' "specific" contacts with Virginia, that is, "signing a contract and allegedly purchasing an interest in property in that jurisdiction." (App. at 7-8.)

issues raised by the Maryland Court's ruling, the Commonwealth of Virginia petitioned the Maryland court for leave to intervene in the Maryland proceeding. (App. at 58.)

The Commonwealth of Virginia also filed a Motion for Reconsideration in the Maryland Court of Appeals. (App. at 62.) In its Motion for Reconsideration, the Commonwealth of Virginia argued that the Maryland Court of Appeals' decision filed on February 12, 1997, was erroneous. In support of this contention, the Commonwealth of Virginia argued that the Virginia Code provides for sufficient procedural safeguards to ensure that the due process rights of non-resident litigants are protected. (App. at 62.) In addition, the Commonwealth of Virginia argued that the procedural mechanism set forth in Va. Code § 8.01-329 is "reasonably calculated to apprise interested parties of the pendency of the action and to afford them an opportunity to present their applications." (App. at 62.) At the conclusion of its Motion for Reconsideration, the Commonwealth of Virginia expressed its willingness and desire to submit additional briefs and argument to the Maryland Court of Appeals in defense of its statutes. (App. at 66.) Counsel for the Miserandinos filed a brief in opposition to the Commonwealth's Petition to Intervene.

The Maryland Court of Appeals did not order the submission of additional briefs or argument by the parties. Instead, by order dated April 8, 1997, the Maryland Court of Appeals granted the Commonwealth of Virginia's Petition to Intervene as a party in the proceedings but denied its Motion for Reconsideration. (App. at 53.) It

also issued a Mandate on April 8, 1997, implementing its ruling of February 12, 1997. (App. at 56.)

SUMMARY OF REASONS FOR GRANTING THE WRIT

This case presents issues of substantial public importance (1) for business interests engaged in interstate commerce and, (2) concerning the deference which must be given by sister states to the state court judgments obtained in accordance with long-standing state law. The case also involves issues which, as conceded by the Maryland Court of Appeals, have not yet been clearly resolved by this Court. (App. at 8.)

The Maryland court's decision has the potential to greatly disrupt creditors' practice in the densely populated northern Virginia area and around the country. The decision already has been publicly recognized by legal commentators as having the potential to "wreak havoc" with respect to the ability of Virginia's creditors to enforce judgments against non-resident debtors. *Virginia Lawyer's Weekly*, Vol. XI, No. 39, p.1 (March 3, 1997). This conclusion is supported by the fact that the Secretary of the Commonwealth processes over 50,000 requests for service upon non-residents per year. (App. at 82-83.) Moreover, the change in Virginia procedure suggested by the Maryland Court of Appeals, that is, requiring the Secretary of the Commonwealth to forward notice of Virginia long-arm claims to non-residents by certified or registered mail, would be extremely burdensome upon

the Secretary of the Commonwealth and would necessarily result in an increase in the workload, staffing needs and costs of her office. (App. at 83.) Logically, these costs would ultimately be borne by the taxpayers of Virginia.

The Maryland decision also draws into question other federal and state laws permitting service and notice by first-class mail. *See, e.g.*, Federal Bankruptcy Rule 7004(b) (1996) (authorizing service by first-class mail); 20 U.S.C. § 1095a (a) (2) (in federal garnishment proceeding, "the individual shall be provided written notice, sent by mail to the individual's last known address. . . . "); Minn. Stat. § 170.55 (1996) (authorizing notice of motor vehicle liability claims to be sent by non-residents by first-class mail); Rule 6-125 of the Maryland Rules of Procedure ("Method of service – Generally – Except where these rules specifically require that service shall be made by certified mail, service may be made by personal delivery or ordinary mail); Idaho Code § 15-4-303 (1996) (comment to official text – in probate cases "[t]he provision for ordinary mail as a substitute for registered or certified mail is provided because . . . registered mail may not be available to reach certain addresses . . . and also certified mail may not be available as a process for service because of the method of delivery used [rural delivery and star route delivery]"); Mont. Code Ann. § 72-4-203 (1995) (again providing for mailed service in probate cases); N.D. Cent. Code § 30.1-25-03 (1995) (same); Utah Code Ann. § 75-4-303 (1996) (same).

Furthermore, the Maryland Court of Appeals rejected this long-standing Virginia procedure without any evidence to support the conclusion that first-class mail constitutes an unreliable method of providing notice. The

Maryland court's arbitrary action, and the likelihood of inconsistent findings and rulings in other state courts, demonstrates the need for a national standard upholding the use of first-class mail for notice proceedings.

Finally, well-recognized principles of full faith and credit should not be allowed to permit a court of a sister state to second-guess the decisions of a neighboring state's legislature merely because that court concludes that, in its opinion, more stringent and costly notice requirements are preferable.

For all of these reasons, this Court should grant the Commonwealth of Virginia's Petition for Writ of *Certiorari*.

REASONS FOR GRANTING THE PETITION

I. First-Class Mail Delivery By The United States Postal Service Constitutes A Reasonably Calculated Method Of Providing Notice For Purposes Of Obtaining *In Personam* Jurisdiction So As To Satisfy Requirements Of Due Process.

A. First-Class Mail Satisfies Requirements of Due Process

The Maryland Court of Appeals erred when it concluded that first-class mail delivery by the United States Postal Service does not constitute an adequate mechanism for providing notice in an *in personam* case. The Maryland Court of Appeals reached this erroneous decision without evidence before it to support the conclusion that the United States mail constitutes an unreliable

method of advising persons of the claims which have been asserted against them. Instead, again without statistical proof, the Maryland Court concluded that alternative methods such as certified and registered mail "offer a considerably higher degree of probability of actual notice." (App. at 26.)

In fact, common sense weighs against the Maryland Court of Appeal's conclusion in this regard. As noted by the dissent,

> [Certified or Registered] mail does not increase the likelihood that the mail will arrive at the address to which it was sent. If the address is correct, then ultimate receipt by the defendant is about as likely with first-class mail as with certified mail. The use of "certified mail" merely provides corroborative evidence that the material is actually sent and further provides a record of dispatch and delivery. *See State v. Barnes*, 273 Md. 195, 209, 328 A.2d 737, 746 (1974) (stating that "[t]he only logical purpose to be served by directing that the notice be delivered by certified mail is to provide corroboration for bald assertions of having given such notice and a means of tracing and establishing the date of receipt should a dispute concerning the delivery of notice arise"). . . .

(App. at 36.) *See also Holmes v. Randolph*, 610 N.E.2d 839, 845 (Ind. 1993) (noting that the "use of certified mail will provide a better record of receipt but not necessarily

increase the probability the addressee will actually receive the notice.")[2]

Furthermore, it is clear that Virginia's statutory method for service of process on non-residents provides sufficient procedural safeguards to ensure that the due process rights of non-resident litigants are protected in that it is "reasonably calculated . . . to apprise interested parties of the pendency of [Virginia actions against them] and to afford them an opportunity to present their objections." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950). These procedural safeguards include a provision within the Virginia Code which allows litigants to challenge Virginia judgments when they claim not to have received actual notice of a Virginia proceeding against them. Va. Code Ann. § 8.01-428 (1950, 1992 Repl. Vol.) (App. at 80.)[3] In addition, as explained above, the Secretary of the Commonwealth is required to certify that she

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[2] Furthermore, again as noted by the dissent, the method of service set forth in § 8.01-329 "provides a record of dispatch" which is comparable to certified or registered mail. (App. at 37.) Section 8.01-329 requires the Secretary of the Commonwealth to mail the notice and to certify that it has been sent, thereby, as is the case with registered or certified mail, requiring a disinterested party to issue a record of dispatch.

[3] In its opinion, the Maryland Court of Appeals reasoned that the protections afforded by Va. Code § 8.01-428 do not save the defective means of service of process set forth in § 8.01-329. (App. at 27-28.) The Maryland court relied upon this Court's decision in *Armstrong v. Manzo*, 380 U.S. 545 (1965), when reaching this conclusion. The circumstances which led to the violation of due process recognized in *Armstrong, supra*, are clearly distinguishable from Virginia's statutory procedure for challenging default judgments.

has forwarded the relevant pleading to the non-resident defendant's last known address.

Moreover, this Court has recognized on numerous occasions "that mail service is an inexpensive and *efficient* mechanism that is reasonably calculated to provide actual notice." *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 489-90 (1988) (emphasis added). *See also Mennonite Board of Missions v. Adams*, 462 U.S. 791, 799-800 (1983); *Greene v. Lindsay*, 456 U.S. 444, 455 (1982); *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. at 319. Statistics from the United States Postal Service support this conclusion. The 1996 Comprehensive Statement on Postal Operations transmitted by the United States Postal

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In *Armstrong*, this Court concluded that a father's right to due process was violated when he failed to receive notice of a Texas proceeding terminating his parental rights. Even though the child's mother was aware of the father's address, she did not attempt to provide him with notice of the termination proceeding. In a subsequent proceeding, the father was able to obtain the reinstatement of his parental rights. Nevertheless, this Court concluded that the second proceeding was not sufficient to "cure" the previous violation of the father's right to due process. *Id.* at 551.

In contrast, pursuant to Va. Code § 8.01-329, plaintiffs are required to execute an affidavit containing what they swear under oath to be the last known address for the defendants sought to be served. In turn, the Secretary of the Commonwealth is required to provide non-resident defendants with notice by first-class mail and to certify that she has sent such notices to the last known addresses of the relevant defendants. If for some reason a non-resident defendant does not receive the notice, he can challenge any judgment which has been entered against him pursuant to the procedure set forth in Va. Code § 8.01-428. (App. at 80.)

Service to Congress in accordance with 39 U.S.C. § 2401(e) reflects a decrease in customer complaints in 1996 from previous years. (App. at 161.) This Statement also reflects that "92 percent of the nation's households rate[ ] their overall satisfaction with the Postal Service as 'excellent,' 'very good,' or 'good'. . . . " (App. at 187.) In addition, an independent study conducted by the accounting firm of Price Waterhouse reflects an average national overnight successful delivery rate for first-class mail of 89% for mail sent within overnight geographical commitment areas; a 79% successful delivery rate for mail sent within two-day geographical commitment areas; and a 80% successful delivery rate for mail sent within three-day geographical commitment areas.[4] (App. at 185.)

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[4] The Maryland Court of Appeals found the Postal Service's statistics regarding successful delivery rates to be unpersuasive. (App. at 23.) Instead, the Maryland court indicated that it would need to see data from the Postal Service to show the amount of first-class mail which is not successfully delivered in order to reach the conclusion that first-class mail is a reliable method for providing notice in an *in personam* case. (App. at 23.)

It is not difficult to understand why reliable data regarding "undelivered" first-class mail would be difficult to obtain. Data which conceivably could be obtained regarding the number of complaints made to the Postal Service about the alleged non-delivery of first-class mail would not serve as a reliable indicator of the efficiency of notice given by first-class mail. Invalid or untrue complaints regarding non-delivery are likely to be made by persons attempting to establish that they did not receive undesirable mail or to establish that they have sent required mail, such as, for example, mail relating to the payment of bills. Furthermore, complaints also are likely to be made about mail which is subsequently delivered to the proper location (and the complaining party is unlikely to retract their complaint).

First-class mail has also been recognized as a valid mechanism for obtaining service of process in the context of bankruptcy litigation. Federal Bankruptcy Rule 7004(b) (1996), adopted in 1983, permits service of a summons and complaint in bankruptcy cases by first-class mail, and provides that the mailing may be made "to the individual's dwelling house or usual place of abode," or "to the place where the individual regularly conducts a business or profession." The constitutionality of the notice provided in accordance with Bankruptcy Rule 7004 has been upheld on numerous occasions. *Matter of Park Nursing Center, Inc.*, 766 F.2d 261, 263 (6th Cir. 1985); *In Re M & L Business Mach. Co., Inc.*, 190 B.R. 111, 115 (D. Colo. 1995); *In Re Cossio, Inc.*, 163 B.R. 150, 156 (9th Cir. BAP (Cal.) 1994), *aff'd*, 56 F.3d 70 (9th Cir. 1995); *Matter of Younger*, 166 B.R. 494, 496-97 (S.D. Ga. 1993); *Leavell v. Karnes*, 143 B.R. 212, 217 (S.D. Ill. 1990); *Windsor Communications Group, Inc. v. Grant*, 75 B.R. 713 (E.D. Pa. 1985).[5]

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[5] The constitutionality of notice provided by first-class mail has also been upheld by federal and state courts in connection with additional types of claims. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1995) (upholding notice by first-class mail to potential class members in class action lawsuit); *Peters v. National Railroad Passenger Corp.*, 966 F.2d 1483, 1485 (D.C. Cir. 1992) (recognizing notice by mail to class members as "the best notice possible under the circumstances") (citation omitted); *Nelson v. Diversified Collection Services, Inc. and United Student Aid Funds*, 1997 U.S. Dist. LEXIS 5214 (D.C. Md. 1997) (upholding notice by first-class mail of federal garnishment claims); *Schilling v. Odlebak*, 177 Minn. 90, 224 N.W. 694 (1929) (upholding constitutionality of Minnesota statute authorizing service upon Secretary of State as statutory agent of non-residents who are sued in connection with motor vehicle accidents occurring within the state of Minnesota where the

Even the Maryland Court of Appeals recognized the bankruptcy service rule as "strong precedent and rather extensive experience that supports the use of first-class mail for the purpose of obtaining personal jurisdiction." (App. at 23.) Nevertheless, the Maryland court attempted to distinguish bankruptcy litigation from the types of claims at issue pursuant to Virginia's long-arm statute in an effort to support its conclusion that something "more" is required to fulfill due process requirements when general long-arm jurisdiction is asserted. As explained below, the Maryland court's attempts in this regard are irrelevant to the determination of whether the method of service provided for within Va. Code § 8.01-329 satisfies the requirements of procedural due process and demonstrate the need for a national standard on the sufficiency of first-class mail service.

B. The Maryland Court's Test for Determining When Service by First-Class Mail is Sufficient is Illogical and Strained.

Under the analysis adopted by the Maryland Court of Appeals, if providing notice by first-class mail is not constitutionally permissible in a particular type of lawsuit, then statutorily authorized notice by mail does not establish *in personam* jurisdiction even if received. The Maryland court's test for ascertaining when notice by mail is sufficient is uncertain at best in that, as explained above, the Maryland court does recognize that service by

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statute also provided that notice of such a claim is to be mailed by regular mail to the non-resident defendant).

mail is constitutionally sufficient in certain causes of action, such as bankruptcy. The Maryland court attempts to give several reasons for distinguishing the bankruptcy cases from long-arm litigation pursued against non-residents in Virginia, none of which are persuasive.

First, citing *Matter of Park Nursing Center, supra,* the Maryland Court of Appeals notes that bankruptcy default judgments may be set aside if a litigant can establish that he failed to receive notice of the proceeding. (App. at 24.) This attempted distinction by the Maryland court ignores the fact that Virginia provides for a similar procedural protection within its statutes. Va. Code § 8.01-428.

The Maryland Court of Appeals also implies that service by first-class mail may be appropriate in bankruptcy litigation because of the high volume of cases in the bankruptcy courts. (App. at 25.) If volume of cases is a relevant factor in determining whether the requirements of procedural due process are met by a statutorily authorized method of service, then the Maryland Court of Appeals should have considered the extremely high volume of non-resident service applications which are processed by the Secretary of the Commonwealth per week and per year. As explained in the Commonwealth of Virginia's Motion for Reconsideration (App. at 64) and in an affidavit from the Deputy Secretary of the Commonwealth which has been made a part of the Appendix to this Petition (App. at 82), the Secretary of the Commonwealth processes approximately 975 requests for service of process on non-residents per week and over 50,000 of such requests per year. In addition, as explained in the Deputy Secretary's affidavit, a requirement that each of these requests be forwarded by registered or certified

mail to non-residents, as suggested by the Maryland Court of Appeals, would substantially increase the workload, staffing needs, and costs of the Secretary of the Commonwealth. Thus, the "state interest" in providing for notice by first-class mail and the "special circumstances" involved in non-resident service cases in Virginia would appear to be at least equivalent to those which were recognized by the Maryland court to be involved in bankruptcy cases so as to justify service by first-class mail.

Regardless, as explained above, the only relevant issue with respect to statutory compliance with due process is whether the means provided for within the statute is "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. at 314. There was no evidence before the Maryland Court of Appeals to support its conclusion that first-class mail is not a "reasonably calculated [method] . . . to apprise interested parties" and "to afford them an opportunity to present their objections" and, in fact, there is precedent from this Court to support a contrary conclusion. Furthermore, there was no evidence before the Maryland Court of Appeals to support its conclusion that certified or registered mail is more likely to result in actual notice of a pending action. Contrary to the apparent reasoning of the Maryland court, the mere fact that these alternative means of providing notice are more costly for litigants to utilize or that these methods may provide potential plaintiffs with convenient evidence of receipt does not mean

that the use of certified or registered mail is more likely to result in actual notice.

Thus, it is clear that the Maryland Court of Appeals erred when it concluded the use of first-class mail to provide notice is insufficient to meet requirements of due process. It is also apparent that the Maryland court's erroneous decision has the potential to wreak havoc on the enforceability of Virginia judgments within Maryland and across the country, and, further, that the decision indirectly calls into question the constitutionality of numerous statutes, both state and federal, which authorize notice by first-class mail.[6] Under the circumstances, this Honorable Court should grant the Commonwealth of Virginia's Petition for a Writ of *Certiorari* and reverse the decision of the Maryland Court of Appeals on appeal.

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[6] *See, e.g.*, Minn. Stat. § 170.55 (1996); 20 U.S.C. § 1095a (a) (2) (authorizing service by mail in federal garnishment actions used in connection with federal student loans); Idaho Code § 15-4-303 (1996) (authorizing service by mail in rural areas in probate cases); Mont. Code Ann. § 72-4-203 (1995) (same); N.D. Cent. Code § 30.1-25-03 (1995) (same); Utah Code Ann. § 75-4-303 (1996) (same).

II. The Full Faith And Credit Clause Of The United States Constitution Requires A State To Recognize The Validity Of An *In Personam* Judgment Obtained Within A Foreign State If Actual Notice Of The Foreign Action Was Received By The Judgment Debtor, Irrespective Of The Method Used To Obtain Actual Notice.

Article IV, Section 1 of the Constitution of the United States [hereinafter refered to as the "Full Faith and Credit Clause"] provides that:

> [f]ull faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

The purpose of the Full Faith and Credit Clause is to preserve rights acquired or confirmed under public acts and judicial proceedings of one state by rendering recognition of their validity in others. *Pink v. A.A.A. Highway Express, Inc.*, 314 U.S. 201, 209 (1941); *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939). Under this Clause, all states are required to respect and enforce a judgment of another state, where its courts have general jurisdiction over the subject matter and the parties. *Kulkov v. Superior Ct. of California*, 436 U.S. 84, 95 n.9 (1978) (noting that a final judgment entered by a state court having jurisdiction over the person and subject matter should be entitled to full faith and credit by the courts of sister states); *Williams v. North Carolina*, 317 U.S. 287, 299 (1942) (a divorce decree entered by one state in accordance with principles of due process is binding

upon courts of other states). The Maryland Court of Appeals violated the Full Faith and Credit Clause when it refused to give effect to the Virginia judgment obtained by Resort against the Miserandinos.

By enacting a long-arm statute that requires notice to be sent by first-class mail, the Virginia General Assembly must be presumed to have concluded that this method is reasonably calculated to inform non-residents of the pendency of a judicial proceeding against them. *See Redding v. C.I.R.*, 630 F.2d 1169, 1181-82 (7th Cir. 1980), *cert. denied*, 450 U.S. 913 (1981) (legislature is presumed to be aware of constitutional principles set forth by the courts when enacting legislation); *Brown v. Va. Dept. of Corrections*, 886 F.Supp. 531, 535 (E.D. Va. 1995) (it is presumed that the General Assembly does not intend that its statute's application lead to irrational circumstances). In accordance with the Full Faith and Credit Clause, the Maryland Court of Appeals should have deferred to the Virginia General Assembly's conclusions in this regard. *See Public Citizen v. Dept. of Justice*, 491 U.S. 440, 465-66 (1989) (statutes are to be construed in a constitutional manner if they are subject to such a construction).

Furthermore, the Maryland Court of Appeals should only refuse to give effect to a Virginia judgment if it has been established that the judgment was rendered in violation of principles of procedural due process. *See International Shoe v. Washington*, 326 U.S. 310, 291 (1945). Such a violation was not established in this case. In fact, the Maryland Court of Appeals refused even to consider all of the factors necessary for the court's analysis in reaching such a determination.

Specifically, the Maryland court failed to make any inquiry whatsoever as to whether the Miserandinos actually received notice of the Virginia judgment.[7] If, in fact, the Miserandinos received actual notice of the Virginia proceeding in order "to afford them an opportunity to present their objections," then they were given all of the process that they were due under the Constitution. *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Maryland court's disclaimer of Virginia law is even more egregious here because the court failed to follow its own established precedent. *See Academy of IRM v. LVI Environmental Services, Inc.*, 344 Md. 434, 687 A.2d 669 (1997). In *Academy of IRM*, the Maryland Court of Appeals held that compliance with statutory requirements for service of process gives rise to a presumption that service was properly made. *Id. See also Mohr v. Universal C.I.T. Corp.*, 216 Md. 197, 204, 140 A.2d 49, 51 (1958) (referring to "the universal rule to the effect that the receipt of a letter by the addressee is presumed, when it is shown that the letter, properly stamped and addressed, was posted in the mails").

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[7] As noted by the dissent, the fact that the Miserandinos received notice of Resort's attempt to record the Virginia judgment in Maryland by first-class mail at the same address which was provided to the Secretary of the Commonwealth in Resort's affidavit for service of process (provided in accordance with Va. Code § 8.01-329), renders their contention that they failed to receive notice of the Virginia proceeding highly suspect. (App. at 35.)

Moreover, as explained above, the Maryland Court of Appeals' standard for when providing notice by first-class mail is constitutionality sufficient is vague at best. A preferable approach, which would have been consistent with the Full Faith and Credit Clause, would have been for the Maryland court to recognize that notice by first-class mail is permissible in all forms of *in personam* actions and to have left with Virginia's General Assembly the decision as to when notice by first-class mail may be authorized. Some state legislatures or even Congress may elect to adopt statutes which comport with the minimum requirements of due process, while others may choose to adopt more stringent requirements than those actually mandated by the Constitution. A court of a sister state should not be permitted to second guess the decisions of a neighboring state's legislature merely because that court concludes that, in its opinion, more stringent and costly notice requirements are preferable. *See Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481-82 (1982) (interpreting federal Full Faith and Credit Act and concluding that federal courts may not "employ their own rule . . . in determining the effect of State judgments").

Because first-class mail has been recognized by this Court as a "reasonably calculated" means of providing notice to defendants, if the Miserandinos actually received the mailed notice authorized by Va. Code § 8.01-329, they received all the process they were due under the Constitution. Therefore, when the Maryland Court of Appeals refused to even consider the issue of whether the Miserandinos received actual notice, it committed reversal error subject to correction by this Court if

the Commonwealth of Virginia's Petition for a Writ of *Certiorari* is granted.

CONCLUSION

This Court should grant the Commonwealth of Virginia's Petition for Writ of *Certiorari* and reverse the judgment of the Maryland Court of Appeals.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA, *EX REL.*,
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IN THE COURT OF APPEALS OF MARYLAND

No. 93

September Term, 1995

Gerald P. Miserandino and Karen L. Miserandino

v.

Resort Properties, Inc. et al.

Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker
McAuliffe, John F. (retired,
specially assigned), JJ.

Opinion by McAuliffe, J.
Rodowsky, Chasanow,
and Raker, JJ.
dissent.

Filed: February 12, 1997

This case involves a constitutional attack by judgment debtors against a judgment entered against them by a state trial court in Virginia. The collateral attack on the judgment was made in the Circuit Court for Carroll County, Maryland, where the judgment creditor sought to enroll the judgment. The defendants challenge the basis

for the exercise of long-arm personal jurisdiction by the Virginia court, as well as the constitutional sufficiency of the Virginia statutory scheme for the giving of notice to nonresidents proceeded against under that Commonwealth's long-arm jurisdiction statute.

I. FACTS

Resort Properties, Inc. (Resort), recorded a judgment against Gerard and Karen Miserandino, (defendants) in the Circuit Court for Carroll County on June 3, 1993. The notice of judgment, mailed by a court clerk to the defendants, simply informed them that a judgment of $4,211.82 had been recorded against them by Resort. Thereafter, the defendants filed a motion to strike the entry of the foreign judgment. From their inspection of the court's file, the defendants knew that the judgment was obtained in Warren County, Virginia and that Resort was the assignee of North Fork Shenandoah Vacations, Inc.

In the motion, the defendants alleged by affidavit made on personal knowledge that they were not served with process, had no notice, and did not appear in the Virginia action. They alleged further, that:

> Defendants were not subject to the jurisdiction of said Virginia Court in said action, nor was either of them. . . . Said foreign judgment is invalid, null, void and of no effect since said Virginia Court lacked *in personam* jurisdiction over defendants, or either of them, in the action in which that judgment was entered.

Specifically, the motion alleged that neither of the defendants resides in Virginia, neither is domiciled in Virginia,

neither is employed in Virginia, carries on any regular business, occupation, or vocation in Virginia, or maintains a principal place of business in Virginia. Finally, they alleged:

> Defendants do not have sufficient contacts with Virginia to confer *in personam* jurisdiction over them, or either of them, upon the Virginia court in which said foreign judgment was entered.

In an accompanying memorandum, the defendants argued that they did not have sufficient contacts with Virginia to "satisfy traditional notions of fair play and substantial justice," quoting *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1877).

In opposition, Resort stated: "The underlying transaction was based upon the defendants having an interest in and possessing real property in Virginia, and the transaction in and of itself constituted transacting business by the defendants in Virginia." Resort also averred, "Defendants executed a loan application in July, 1988, in Virginia for an interest in real property which was located in Virginia, thereby confessing fees and jurisdiction over both defendants in the State of Virginia."

At the hearing of defendants' motion, Resort's attorney informed the court that he had a loan application, club membership contract, and deed in his file, and that he was willing to provide the court with copies. The court interrupted and there ensued an exchange between the judge and the defendants' attorney, Mr. Lipsitz, as follows:

> THE COURT: Well . . . I'm not sure Mr. Lipsitz has any problem with the fact that there was property purchased, or a loan made, or a contract made in West (sic) Virginia. . . .
>
> MR. LIPSITZ: Well, I'm not pressing that point today, your Honor . . .
>
> I raise the issue because, frankly, until this morning, I had no idea what the claim was. You can't – from the record . . . you really can't tell what the claim is. . . . If my people, in fact, own property in Virginia, and if this transaction involved that – is involved in this case, I probably would not prevail on the in personam jurisdiction point. Nevertheless, the service point is the critical point. . . . I'm willing to accept my brother's statement as to what he says is in his file . . .
>
> THE COURT: For purposes of the hearing (inaudible).
>
> MR. LIPSITZ: . . . that's something that could be thrashed out at a trial on the merits . . . maybe they're subject to jurisdiction; maybe they're not.

The court initially granted the defendants' motion to strike. Resort filed a motion to alter or amend because the court had cited the wrong statute in its order. After a second hearing, the court reversed its ruling and recorded the judgment against the defendants.

The Court of Special Appeals affirmed in an unreported opinion, and this Court granted certiorari.

II. PERSONAL JURISDICTION

Virginia, like Maryland, has interpreted its long-arm statute as an attempt to assert jurisdiction to the extent possible under the Due Process Clause of the federal Constitution. *Brown v. American Broadcasting Co., Inc.*, 704 F.2d 1296 (4th Cir. 1983). Section 8.01-328.1 of the Virginia Code (1950, 1992 Rep. Vol.) provides that:

> A court may exercise personal jurisdiction over a person . . . as to a cause of action arising from the person's:
>
> 1. Transacting any business in this Commonwealth;
>
> * * *
>
> 6. Having any interest in, using, or possessing real property in the Commonwealth.

We note initially that the defendants had the burden of producing evidence to attack the judgment sought to be recorded.

> In Maryland, an authenticated copy of a record is prima facie evidence of jurisdiction and the judgment or decree must be presumed valid until it is declared invalid by a competent court.

Imperial Hotel v. Bell Atlantic, 91 Md. App. 266, 271-72, 603 A.2d 1371 (1992). In *Brewster v. Brewster*, 204 Md. 501, 105 A.2d 232 (1954), the Court considered the issue of a divorce obtained by the husband in Arkansas and another divorce obtained by the wife in Maryland. The wife argued the Arkansas divorce should not take effect until she was given an opportunity to prove it invalid.

The court ruled, however, that "until [the foreign judgment] is declared to be invalid by a competent court, it must be presumed to be valid and given full faith and credit. . . . The burden of proof is upon the attacker." *Id.* at 505. *See also Van Wagenberg v. Van Wagenberg*, 241 Md. 154, 160, 215 A.2d 812 (1966). As noted, defendants offered no evidence to contradict the basis of long-arm jurisdiction asserted by Resort.

To exercise personal jurisdiction over a defendant who is not present in the forum state, "due process requires only that . . . [the defendant] have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). "[T]he quality and quantity of contacts required to support the exercise of personal jurisdiction" depend upon the facts of each particular case. *Camelback Ski Corp. v. Behning*, 312 Md. 330, 338, 539 A.2d 1107 (1988), *cert. denied*, 488 U.S. 849 (1988). Ordinarily, cases involve either "general jurisdiction" where the cause of action is unrelated to the defendant's contact with the forum state, or "specific jurisdiction" where the cause of action arises out of the defendant's contacts with the forum state. *Id.*

> Generally speaking, when the cause of action does not arise out of, or is not directly related to, the conduct of the defendant within the forum, contacts reflecting continuous or systematic . . . conduct will be required to sustain jurisdiction. On the other hand, when the cause of action arises out of the contacts that the defendant had with the forum, it may be entirely fair to permit the exercise of jurisdiction as to that claim.

Id. at 338-39.

The defendants' allegations were insufficient to raise an actual controversy regarding the Virginia court's personal jurisdiction. If this were a "general jurisdiction" case, their assertion that they did not reside in Virginia or conduct business regularly in Virginia may have been sufficient to raise an actual controversy. *See International Shoe, supra,* 326 U.S. at 317. This case, however, may be classified as a "specific jurisdiction" case because Resort's cause of action arises out of the defendants' contacts with Virginia, signing a contract and allegedly purchasing an interest in property in that jurisdiction. Thus, under the facts of this case, the defendants' allegations did not raise an actual controversy regarding the existence of a sufficient basis for the exercise of personal jurisdiction.

In a suit arising out of a contract signed in the forum state, the contract plus other factors provide a sufficient basis for the exercise of personal jurisdiction in the forum state. In *McGee v. International Life Ins. Co.,* 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed. 223 (1957), the Supreme Court ruled that a Texas insurance company was amenable to suit in California because the insured was domiciled in California and the suit arose under the insurance contract. "It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State." *Id.* at 223. Other factors, however, such as ongoing relationship with the party in the forum state, are required to establish "minimum contacts." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 478-79, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). In this case, the defendants never alleged or proved that they did not sign a contract in Virginia, that this case did not arise out of a contract

signed in Virginia, or that there were no other factors to support personal jurisdiction.

In any event, it is clear from the colloquy we set forth in Section 1, *supra*, that for present purposes the defendants waived any attack they may have had against the assertion of personal jurisdiction under the Virginia long-arm statute, and acquiesced in the statement of counsel for the plaintiff that the documentary evidence he proffered would be sufficient to show a proper ground for the exercise of that jurisdiction. Any issues that might have been raised as to the sufficiency of the plaintiffs' original pleadings in Virginia, or as to the grounds for personal jurisdiction, were effectively waived for purposes of the circuit court hearing.

III. ADEQUACY OF NOTICE

The more difficult question with respect to the acquisition of personal jurisdiction by the Virginia court involves the constitutional adequacy of the means employed to give notice to the defendants. The procedure followed by the plaintiff was in accordance with the Virginia statute prescribing the method of service of process upon a nonresident individual in a case involving long-arm jurisdiction, but that will not be sufficient to confer jurisdiction unless the method authorized by the statute comports with the requirements of federal due process. Thus, we are required to address a question not yet resolved by the United States Supreme Court, and only rarely considered by other federal and state courts: whether initial and original service of process by first-

class mail is constitutionally sufficient to confer *in personam* jurisdiction over a nonresident individual in a long-arm jurisdiction case.

The Due Process Clause of the 14th Amendment "at a minimum . . . require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950). The importance of giving adequate notice cannot be overstated.

> No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.

Anti-Fascist Committee v. McGrath, 341 U.S. 123, 171-72, 71 S.Ct. 624, 95 L.Ed. 817 (1951), Frankfurter, J. concurring (footnote omitted).

No particular procedure is required in all cases. "On the contrary, due process is flexible and calls only for such procedural protections as the particular situation demands. Procedures adequate under one set of facts may not be sufficient in a different situation." *Department of Transportation v. Armacost*, 299 Md. 392, 416, 474 A.2d 191 (1984). *See also, Golden Sands Club v. Waller*, 313 Md. 484, 493, 545 A.2d 1332 (1988) (Maryland Contract Lien Act, requiring notice of lien to condominium unit owners by certified or registered mail, return receipt requested, satisfies due process).

To determine whether notice in a particular case is constitutionally sufficient, the court "must balance the interests of the state or the giver of notice against the individual interest sought to be protected by the fourteenth amendment." *Golden Sands, supra,* 313 Md. at 496; *see also, Mullane,* 339 U.S. at 314; *Armacost,* 229 Md. at 416. At a minimum, the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane,* 339 U.S. at 314.

Among the multiple factors to be considered in determining what process is due in a given situation is the nature of the action being brought.

> What is a sufficient method of notification depends upon the nature of the action and the circumstances. The interests to be considered are, on the one hand, those of the state and of the plaintiff in bringing the issues involved to a final settlement and, on the other hand, those of the defendant in being afforded an opportunity to defend. The practicalities of the situation must be considered. A state is not precluded from exercising such judicial jurisdiction as it may possess by the fact that under the circumstances it is impossible to make certain that notice will reach the defendant or because the only sure way of giving notice to the defendant would be so burdensome and expensive as to be impracticable. On the other hand, when actual notice is practicable, a procedure which is a mere gesture is not enough. A method of notification which would be sufficient in some circumstances may be insufficient in others

> because another method would obviously be better calculated to give the defendant knowledge of the action.

Restatement (Second) of Conflict of Laws §25 cmt. d. (1971). Although the distinction between *in rem* and *in personam* actions no longer offers a *per se* solution to problems of notice, the nature of the action continues to be relevant.

> [W]e decline to resolve the constitutional question based upon the determination of whether the particular action is more properly characterized as one *in rem* or *in personam*. . . . That is not to say that the nature of the action has no bearing on a constitutional assessment of the reasonableness of the procedures employed. The character of the action reflects the extent to which the court purports to extend its power, and thus may roughly describe the scope of potential adverse consequences to the person claiming a right to more effective notice.

Greene v. Lindsey, 456 U.S. 444, 450, 102 S.Ct. 1874, 72 L.Ed.2d 249 (1982). The Supreme Court has recognized that when an action involves property, the state may indulge certain assumptions.

> The ways of an owner with tangible property are such that he usually arranges means to learn of any direct attack upon his possessory or proprietary rights. Hence, libel of a ship, attachment of a chattel or entry upon real estate in the name of law may reasonably be expected to come promptly to the owner's attention. When the state within which the owner has located such property seizes it for some reason, publication or posting affords an additional measure of

> notification. A state may indulge the assumption that one who has left tangible property in the state either has abandoned it, in which case proceedings against it deprive him of nothing . . . or that he has left some caretaker under a duty to let him know that it is being jeopardized. . . . As phrased long ago by Chief Justice Marshall in *The Mary*, 9 Cranch 126, 144 'it is the part of common prudence for all those who have any interest in [a thing], to guard that interest by persons who are in a situation to protect it.'

Mullane, supra, 339 U.S. at 316. More recently, the Court said:

> It is, of course, reasonable to assume that a property owner will maintain superintendence of his property, and to presume that actions physically disturbing his holdings will come to his attention.

Greene v. Lindsey, 456 U.S. at 451. For a further discussion of the "caretaker assumption" *see* R. Greenbaum, *The Postman Never Rings Twice: The Constitutionality Of Process By Posting After Greene V. Lindsey,* 33 Am.Univ.L.R. 601, 616-20 (1984).

When the nature of a case involved judicial settlements by the trustee of a common trust fund embracing 113 trusts with resident and nonresident beneificiaries, the Supreme Court held that personal service of notice of the accounting would not be required.

> This type of trust presupposes a large number of small interests. The individual interest does not stand alone but is identical with that of a class. The rights of each in the integrity of the fund and the fidelity of the trustee are shared by

> many other beneficiaries. Therefore notice reasonably certain to reach most of those interested in objecting is likely to safeguard the interest of all, since any objection sustained would inure to the benefit of all. We think that under such circumstances reasonable risks that notice might not actually reach every beneficiary are justifiable.

Mullane, supra, 339 U.S. at 319. The Court held, however, that newspaper publication alone was insufficient "not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand." *Id.*

The case before us is not *in rem* or *quasi in rem.* This case involves an attempt by one party to obtain a money judgment against another party or parties for an alleged breach of a promise to pay. It is a classic example of a case requiring the acquisition of *in personam* jurisdiction. Historically, in-hand delivery of process has been the preferred method of service in a case of this kind, but equivalent methods have been approved and alternative methods may be utilized when personal service proves difficult or impossible.

In Maryland, the method of service of process ordinarily required to obtain original personal jurisdiction over a resident or nonresident individual is by personal delivery, or by certified mail with restricted delivery and return receipt stating to whom delivered and the date and address of delivery. Maryland Rule 2-121(a). Additionally, personal service outside the state may be made "in the manner prescribed by the court or prescribed by the

foreign jurisdiction if reasonably calculated to give actual notice." *Id.* Substituted service is permitted when a defendant has acted to evade service;[1] when a person resists service by threats, or force;[2] or when good faith efforts to serve the defendant in person or by certified mail have not succeeded.[3]

In the case before us, there is no indication that any earlier attempt of service had been made, or that the defendants were attempting to avoid or resist service. Accordingly, the method of service utilized in this case, service by first-class mail, would not have been sufficient under Maryland law. That fact is of no consequence, however, if the method of service satisfies the requirements of due process, because the service of process was in accordance with the applicable Virginia statute.

Section 8.01-329 of the Code of Virginia (1950, 1992 Repl. Vol.) provides an alternative method of service of process on a nonresident subject to long-arm jurisdiction by service "on the Secretary of the Commonwealth of Virginia . . . who, for this purpose, shall be deemed to be the statutory agent of such person." That section of the code further provides that service on the Secretary

> shall be sufficient upon the person to be served, provided that notice of such service, a copy of the process or notice, and a copy of the affidavit are forthwith mailed, by the Secretary to the person or persons to be served at the last known

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[1] Maryland Rule 2-121(b).

[2] Section 6-303 of the Courts and Judicial Proceedings Article, Maryland Code (1974, 1995 Rep. Vol.).

[3] Maryland Rule 2-121(c).

> post-office address of such person, and a certificate of compliance herewith by the Secretary or someone designated by him for that purpose and having knowledge of such compliance, shall be forthwith filed with the papers in the action.

The concept of serving a state officer or agency in connection with the acquisition of personal jurisdiction over a nonresident dates to the era of *Pennoyer v. Neff, supra,* when it was held that *in personam* jurisdiction could be acquired only by service made within the state. With the subsequent recognition of long-arm jurisdiction the necessity for service within the state disappeared, and resort to the legal fiction of "consent" to service on a local agent or "appointment" of a local agent for service was no longer necessary. See *Olberding v. Illinois Central R. Co.,* 346 U.S. 338, 74 S.Ct. 83, 98 L.Ed. 39 (1953); *Com. de Astral v. Boston Met. Co.,* 205 Md. 237, 264, 107 A2d. [sic] 357, 108 A2d. [sic] 372 (1954).

> Inasmuch as service no longer is limited in all cases to the territorial confines of the jurisdiction in which the court is sitting, the requirement in the original nonresident motorist statutes that service be made "within the state" by serving a state official before process is mailed to defendant no longer is of constitutional magnitude. Although it served its purpose well in an earlier era, it is largely an anachronism today.

4 Wright & Miller, *Federal Practice and Procedure,* §1074 at p. 459 (1987).

Although no longer required as a condition to the acquisition of personal jurisdiction over a nonresident,

and insufficient in itself to confer jurisdiction, involvement of the Secretary of the Commonwealth does serve the important purposes of ensuring that notice is in fact sent and providing a neutral and official repository for documentary evidence of that fact.[4] The defendants do not contend that the required procedure was not followed in this case. That the notice was sent, however, does not answer the question of whether the means employed for transmittal of the notice was constitutionally sufficient. Service on a state official or agency does not obviate the necessity for constitutionally sufficient notice to the defendant. *Wuchter v. Pizzutti*, 276 U.S. 13, 48 S.Ct. 259, 72 L.Ed. 446 (1928); *Grote v. Rogers*, 158 Md. 685, 149 A. 547 (1930).

Personal delivery of process to a defendant, followed by the filing of written proof of that service, is a time-honored method of acquiring personal jurisdiction. This method of service, properly executed, provides a high degree of probability that the defendant received the required notice. An alternative method of "personal delivery" is to have an employee of the United States Postal Service deliver the process to the defendant. This method, service by mail, is often quicker and less expensive than service by a sheriff or private process server, but may present a problem with respect to proof of service.

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[4] The Secretary is required by statute to maintain a detailed "record of each notice of service sent to a person for a period of two years." Section 8.01-329 (E), Code of Virginia (1950, 1992 Rep. Vol.).

Postal regulations providing an optional service of restricted delivery of registered or certified mail do, however, offer a solution to the problem of proof of service. For an additional fee, a person mailing a letter may direct that the letter be handled as registered or certified mail, that the letter may be delivered only to the addressee or his duly authorized representative, and that the person accomplishing delivery return a receipt to the sender bearing the signature of the person receiving the letter and showing the date and address of delivery. *See* 39 C.F.R. § 111.1 incorporating by reference the provisions of the Domestic Mail Manual. *See* in addition, the following sections of the Domestic Mail Manual: S 911 registered mail; S 912 certified mail; S 915 return receipts; and S 916 restricted delivery. When process is mailed in this fashion a return that includes a postal receipt bearing the signature of the defendant or his authorized agent and a copy of the process that was mailed is filed, and the court can proceed with a high level of confidence that the requisite notice has been given.

> Service by registered or certified mail should be regarded as efficacious [as personal service] from a constitutional perspective to evoke personal jurisdiction since the return receipt normally guarantees that defendant or someone related or associated with him has received the process.

4 Wright and Miller, *Federal Practice and Procedure* (1987), § 1074 at p. 457-58.

Problems have arisen with the use of restricted delivery mail for service of process principally with respect to mail that is returned "refused" or "unclaimed." Postal

regulations permit an addressee to "refuse to accept a piece of mail when it is offered for delivery." Domestic Mail Manual, D 042. In the event of an affirmative refusal, the letter is marked "refused" and is returned to the sender. A restricted delivery letter that is not affirmatively refused, but is not delivered because the addressee does not claim it after delivery is attempted and notices have been left at the address given, is returned to the sender marked "unclaimed."

Courts in jurisdictions permitting personal service by registered or certified mail have generally held that a defendant cannot defeat service by an affirmative refusal to accept the letter, but that an "unclaimed" letter will not suffice to confer personal jurisdiction. *See,* Note, *Service Of Process By Mail,* 74 Mich. L. Rev. 381, 387-91 (1975); Note, *Constitutional Law; The Validity Of Service Of Process By Mail When There Is No Return Receipt; The Outer Limits Of Due Process,* 25 Okla. L. Rev. 566, 567-70 (1972). *See also, Lohman v. Lohman,* 331 Md. 113, 626 A.2d 384 (1993) (unclaimed certified letter insufficient to sustain personal jurisdiction over individual defendant).

In this state we have upheld substituted service on a corporation when service was made in accordance with the statute by serving the State Department of Assessments and Taxation after multiple attempts to serve the resident agent were unsuccessful and registered mail notice sent by the Department to the corporation was "unclaimed." *Barrie-Peter Pan Sch. v. Cudmore,* 261 Md. 408, 276 A2d. [sic] 74 (1971). We note, however, that consistent with the flexible nature of due process, the process that must be afforded a corporation may differ from that required in the case of an individual.

> [I]n the case of foreign corporations a less rigorous standard may suffice than in the case of individuals, for the reason that a state is generally without power to exclude an individual non-resident from doing business or making contracts within the state, but may generally completely exclude foreign corporations or may admit them only subject to conditions.

Com. de Astral v. Boston Met. Co., supra, 205 Md. at 262.

Recognition of registered or certified mail as an effective method of accomplishing personal service of process is not unusual. In 1982, the Supreme Court forwarded to Congress a proposed revision of Federal Rule of Civil Procedure 4 that would have utilized restricted delivery registered or certified mail as an alternative to personal service. Significant protests were advanced, however, resulting in a postponement of the effective date of this proposed rule change, and ultimately resulting in a major change in the proposed amendment to the Rule. *See* 96 F.R.D. at 116-135 (1982), detailing the history of the initial proposal and subsequent modification.

In a letter dated December 10, 1982, to the Chairman of the House Judiciary Committee, Assistant Attorney General Robert McConnell summarized the criticisms of the proposed rule, as follows:

> [C]ritics of that system of mail service have argued that certified mail is not an effective method of providing actual notice to defendants of claims against them because signatures may be illegible or may not match the name of the defendant, or because it may be difficult to determine whether mail has been 'unclaimed' or

> 'refused,' the latter providing the sole basis for a default judgment.

96 F.R.D. at 116.

The amendment to Fed. R. Civ. P. 4 that emerged from Congress in 1983 did not permit original service by registered or certified mail as a means of acquiring personal jurisdiction. Instead, the Rule permitted an attempt at service by first-class mail that would be effective *only* if the person to be served returned a written acknowledgment within twenty days after the date of mailing. If an acknowledgment of service was not received, service would then be required under other provisions of the Rule. As an incentive to the recipient to accept service by first-class mail, the Rule further provided that a recipient who declined to file a written acknowledgment would be charged with the costs of service by other means. Changes to Rule 4 effective in 1993 now make it clear that this use of first-class mail does not actually achieve service of process, but rather facilitates the filing by the recipient of a waiver of service that permits the action to go forward.

This history of recent amendments to Fed. R. Civ. P. 4 suggests the existence of an abiding congressional concern about the effectiveness about certain types of mail delivery as a primary means of service to acquire personal jurisdiction. Certainly there has been no suggestion that the use of first-class mail alone to accomplish such service would be looked upon with favor.

The Maryland legislature has recently enacted a bill that permits the giving of first notices in an estate case by

first-class mail instead of restricted mail.[5] Chapter 417 of the Laws of Maryland, 1996, codified at § 1-103 of the Estates and Trusts Article, Maryland Code (1974, 1991 Rep. Vol., 1996 cum. supp.). The legislative history indicates that the principal purpose of the change was to reduce costs now borne by Registers of Wills. There is no discussion in the legislative history or in the brief approval of the proposed bill by the Attorney General of any due process considerations. This Court has not had an opportunity to pass upon the constitutional sufficiency of notice by first-class mail in this context, and we intimate no opinion on that question.

Professor Robert W. Kirst, in his article *Nebraska's Modern Service of Process Statute*, 63 Neb. L. Rev. 1 (1983) suggests that service by first-class mail as a primary means of acquiring personal jurisdiction probably does not comport with the requirements of due process.

> Service by first class mail alone, with no receipt, is an alternative method of substituted service, but it hardly seems likely to comply with the due process clause, notwithstanding the Sixth Circuit's possible endorsement of it in *Greene [v. Lindsey]*. The Sixth Circuit clearly had

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[5] This statute does provide, however, that the use of first-class mail for this purpose will be permitted only if this Court, through its rule-making power, does not require personal service or some other method of notice. Article 1-103(a)(1) of Estates and Trusts Article, Maryland Code (1974, 1991 Rep. Vol. 1996 cum. supp.). This statute also permits the Orphans Court the option of requiring restricted mail delivery of first notices in any case. Section 1-103(a)(2).

> no empirical data to show that the rate of pilferage from mailboxes in public housing projects was less than the rate of removal of summons from doors. The chance that the summons will be mailed or delivered to the wrong address must be at least as high, if not higher, as the chance it will be posted on the wrong door. With ordinary mail there is no sheriff's return of service to provide some assurance that the summons was actually posted and when it was posted; in entering a default, the court can relay [sic] only on post office routine to deliver mail promptly and return undeliverable mail. Although the Supreme Court upheld the use of first class mail service in *Mullane v. Central Hanover Bank & Trust Co.*, it was in the context of an action more like class litigation than individual litigation. Given these defects in service by ordinary mail, the wise course is to consider the caveat in *Greene* as a warning not to use ordinary mail as a routine method of substituted service.

Id. at 6 (footnotes omitted).

The parties did not supply, and we are unable to find, empirical data reflecting the rate of success of the United States Postal Service in delivering first-class mail. The Postal Service does provide performance data relating to average days to deliver from overnight service areas, from two-day service areas, and from three-day service areas. This data is compiled by Price Waterhouse under contract to the Postal Service, and provides figures for 96 cities and the nation. Data for September 14, 1996, to December 6, 1996, disclose that the aggregate on-time

delivery ranges from 76 percent to 91 percent.[6] These figures do not, however, disclose how many pieces of first-class mail were not delivered.

Notwithstanding the concerns about the use of mail without a signed returned receipt or waiver of service to obtain personal jurisdiction, there is strong precedent and rather extensive experience that supports the use of first-class mail for that purpose. That precedent may be found in Federal Bankruptcy Rule 7004, and in the 1976 amended version of its predecessor Rule 704. Prior to the 1976 amendment, Rule 704(c) permitted service of summons, complaint, and notice of trial upon competent individuals "by any form of mail requiring a signed receipt." The 1976 amendment permitted such service anywhere within the United States "by first-class mail postage prepaid." Successor Rule 7004(b), adopted in 1983, continues the practice of permitted service of the summons and complaint by first-class mail, and provides that the mailing may be made "to the individual's dwelling house or usual place of abode [sic], or "to the place where the individual regularly conducts a business or profession." Unlike the procedure specified in Fed. R. Civ. P. 4, no acknowledgment of waiver of service is required to accomplish service under this Rule. Moreover, this method of service may be made in "non-core" as well as "core" proceedings, so that it is recognized as an effective means of acquiring original personal jurisdiction over a

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[6] The break down of the aggregate figures is as follows:
Percent on time, overnight to nation – 90.77 percent
Percent on time, two-day to nation – 75.90 percent
Percent on time, three-day to nation – 79.01 percent

stranger to the bankruptcy proceedings in a contested matter.

The constitutional sufficiency of notice given pursuant to Bankruptcy Rule 7004 and its predecessor rule has been upheld. *Matter of Park Nursing Center, Inc.*, 766 F.2d 261 (6th Cir. 1985); *In Re M & L Business Mach. Co., Inc.* 190 B.R. 111 (D.Colo. 1995); *In Re Kim*, 163 B.R. 157 (9th Cir. BAP 1994); *In Re Cossio*, 163 B.R. 150 (9th Cir. BAP 1994), *aff'd*, 56 F.3d 70 (9th Cir. 1995); *Leavell v. Karnes*, 143 B.R. 212 (S.D. Ill. 1990); *Windsor Communications Group, Inc. v. Grant*, 75 B.R. 713 (E.D. Pa. 1985). It should be noted, however, that two of the three judges in *Matter of Park Nursing Center, Inc. supra*, believed that first-class mail service satisfied due process requirements only if interpreted in the light of Federal Rules of Civil Procedure 55(c) and 60(b) so that

> [I]f a default judgment in bankruptcy proceedings is entered against an individual who, through no fault of his own, failed to receive actual notice by first-class mail, then that judgment should be set aside under these rules upon a showing of meritorious defense.

766 F.2d at 263.

These rule changes have been upheld on the basis that special requirements of bankruptcy cases justify a more expeditious and less costly means of service than might be required in an ordinary civil case.

> In recognition of the time constraints in bankruptcy proceedings and to insure simple and expeditious service of defendants to such proceedings, Congress enacted Bankruptcy Rule 7004(b) to allow for service by mail alone.

In Re M & L Business Mach. Co., Inc., supra, at 115.

> What is needed in bankruptcy proceedings is a form of notice which is likely to achieve actual notice in a large volume of cases but is not overly expensive or time consuming. Bankruptcy proceedings occupy a large and important place in our federal judicial system. In 1983, there were 490,717 petitions filed in bankruptcy court, and of the 842,229 bankruptcy proceedings pending, 123,442 were adversary proceedings.

Matter of Park Nursing Center, Inc., supra, 766 F.2d at 263. Additionally, adjudication of the rights of many persons and entities may be delayed in bankruptcy proceedings pending the determination of adversary proceedings.

As we pointed out earlier, the concept of due process in not static – the process that is due may change according to the circumstances. Necessity may, therefore, be a valid factor in the due process equation in the balancing of the interest of the state against the interest of the individual. Historically, courts have permitted the employment of potentially less effective methods of service where more effective methods have been attempted and have failed, or are otherwise impractical. Notification of lien holders in tax sale proceedings by mail instead of individual personal service may be adequate because of the state's interest in facilitating tax sales, the presumption of reasonable interest in tax sale proceedings by the lien holders, and the difficulty and expenses of personal service, but notice by publication may not be sufficient when the identities of creditors are reasonably ascertainable. *Mennonite Board of Missions v. Adams,* 462 U.S. 791,

103 S.Ct. 2706, 77 L.Ed.2d 180 (1983). Reasonable risks that the method of notice employed will not reach each individual affected may be tolerated when the action is against a class of persons and notice is reasonably certain to reach most of those interested in objecting. *Mullane, supra,* 339 U.S. at 306.

Turning to the case before us, we consider whether there are any special or unique circumstances that would justify relaxation of the ordinary and available methods of service that offer a considerably higher degree of probability of actual notice. In other words, given the availability of personal service by officials or private process servers, or service by restricted delivery mail, what state interest is present in this case that would justify resort to the significantly less certain procedure of first-class mail? We find but one circumstance that may distinguish this case from any other *in personam* action: the fact that the defendants are nonresidents of the Commonwealth of Virginia.

The Supreme Court has recognized that some distinction may be drawn between the methods employed to serve residents and some to serve nonresidents.

> Personal service has not in all circumstances been regarded as indispensable to the process due to residents, and it has more often been held unnecessary as to nonresidents. We disturb none of the established rules on these subjects.

Mullane, supra, 339 U.S. at 314. Additionally, the fact of nonresidency has been held sufficient in some instances to uphold disparate treatment when a challenge has been made under the Equal Protection Clause. *See, e.g., Owens*

v. I.F.P. Corp., 374 F.Supp. 1032 (W.D. Ky. 1974); *Castelline v. Goldfine Truck Rental Service*, 49 Del. 155, 112 A.2d 840, 844 (1955).

We do not, however, view the factor of nonresidency as being of such significance or compelling interest as to justify the shifting of the balance to a point where notice by first-class mail alone will be sufficient to confer personal jurisdiction over an individual defendant. We fail to see why traditional methods of personal service on residents become so much more difficult or costly when applied to nonresidents. Certainly there may be some additional inconvenience or expense when dealing with officials or private process servers in another state, but this small difference hardly justifies the significant step of permitting first-class mail service. Moreover, service by mail requiring a signed return receipt would be no more difficult or expensive in the case of a nonresident than that of a resident. Virginia does not permit first-class mail service of its residents in personal jurisdiction cases except where more conventional means have failed, and then only in conjunction with posting of the premises.[7] Code of Virginia (1950, 1992 Repl. Vol., 1996 Cum. Supp.) § 8.01-296.

Virginia does permit a direct attack against a void judgment, if made within two years, § 8.01-428(A)(ii), and

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[7] Interestingly, Virginia's statutes dealing with long-arm jurisdiction over nonresident motorists and owners or operators of aircraft continue to require the state agent receiving process to "forthwith send by registered or certified mail, with return receipt requested, a copy of the process to the person named therein . . . ." Code of Virginia (1950, 1992 Repl. Vol.) §8.01-312

a collateral attack by an independent equity action if a party can show nonreceipt of the first-class mail notice and the existence of a defense to the action, § 8.01-428(D). As the Supreme Court has said, however, in *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965), actions for relief from a default judgment that place a burden of proof upon the petitioner that he would not have borne if the notice had been sufficient in the first instance are insufficient to overcome the initial deficiency.

The heart of the question is whether the means adopted by the Virginia legislature to notify nonresident defendants of an *in personam* action against them amounted to "a reliable means of acquainting interested parties of the fact that their rights are before the courts" and "means . . . such as one desirous of actually informing the absentee might reasonably adopt to accomplish it," *Mullane, supra*, 339 U.S. at 315, when "the reasonableness of the notice provided . . . [is] tested with reference provided to the "feasible and customary alternatives and supplements to the form of notice chosen," *Greene v. Lindsey, supra*, 456 U.S. at 454, quoting in part from *Mullane*, 339 U.S. at 315. We hold that the means selected by the Virginia legislature to accomplish notice of service of original process in this case does not measure up to this test, and are constitutionally inadequate to afford the due process required by the United States Constitution. The method chosen to acquire personal jurisdiction over nonresident individuals – notice by first-class mail – "is not reasonably calculated to reach those who could easily be informed by other means at hand." *Mullane, supra*, 339 U.S. at 319.

Accordingly, although the judgment may remain valid where entered until there is a contrary ruling by a court of competent jurisdiction, we decline to grant full faith and credit to the judgment because of our finding that the Virginia trial court did not acquire personal jurisdiction over these defendants because of the constitutional inadequacy of notice.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED; CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY RESPONDENT.

IN THE COURT OF APPEALS OF MARYLAND

No. 93

September Term, 1995

GERARD P. MISERANDINO AND
KAREN L. MISERANDINO

v.

RESORT PROPERTIES, INC. et al.

Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker
McAuliffe, John F.
(retired, specially assigned)
JJ.

Dissenting Opinion by Chasanow, J.,
in which Rodowsky and
Raker, JJ., join

Filed: February 12, 1997

A majority of this Court decides today that the notice provisions of Virginia's long-arm statute are unconstitutional. I respectfully dissent. If statutorily authorized service of process in a long-arm jurisdiction case is actually received by the defendant, whether effectuated by first-class mail or certified mail with restricted delivery and

return receipt requested, the court ought to have *in personam* jurisdiction. The focus of this Court should be on whether the Miserandinos actually received the statutorily authorized mail service. If they did, they received all of the process they were due.

If the Miserandinos were served with process in the Virginia proceeding, then the judgment against them should be given full faith and credit. The Miserandinos maintain that they did not receive service, but their uncorroborated denial of service is not necessarily adequate to overcome the presumption that service was properly made. Therefore, this case should be remanded in order to afford the Miserandinos an opportunity to establish that they were not served.

I.

This case does not arise from a failure to follow the applicable statute governing service of process. It is undisputed that Resort strictly complied with the notice requirements of Virginia's long-arm statute. Specifically, Resort served the Secretary of the Commonwealth with process, accompanied by an affidavit setting forth the Miserandinos' address as "418 Ridge Rd., Westminster, Md. 21157," and stating that the Miserandinos were nonresidents of the Commonwealth. The Secretary in turn certified that copies of these papers "were forwarded by first-class mail" to the Miserandinos.

The trial judge concluded that the Miserandinos received due process of law, and denied the Miserandinos' Motion to Strike Entry of the Judgment. Although it is not clear from the record, this ruling may have

included a determination that the Miserandinos received the notice mailed to each of them by the Virginia Secretary of the Commonwealth. Certainly, the Miserandinos' mere affidavit of nonreceipt of service did not conclusively rebut the strong presumption of service. Until there is a hearing to rebut the presumption of service, we must assume that the Miserandinos received the mailed notice. If the Miserandinos received mailed notice of the Virginia suit pursuant to the Virginia statute, this Court should not give them standing to challenge the constitutionality of the notice provision in the Virginia statute.

Recently in *Academy of IRM v. LVI Environmental Services, Inc.*, ___ Md. ___, ___ A.2d ___ (1997) (No. 3, 1996 Term, Slip Op. at 12), this Court held that "the return of service . . . , with its accompanying return receipt, *prima facie* evidences service of process. . . . " "In a particular case, [however,] it may become a question of fact whether the person who signed the return receipt was an agent for accepting the delivery of certified mail on behalf of the corporate officer to whom delivery was restricted." ___ Md. at ___, ___ A.2d at ___ (No. 3, 1996 Term, Slip. Op. at 13). Because no evidence was produced in *Academy of IRM* to contradict the *prima facie* validity of service, we upheld the service of process. ___ Md. at ___, ___ A.2d at ___ (No. 3, 1996 Term, Slip. Op. at 16).

How much of a burden of proof will be placed on a defendant to prove nonreceipt of service will depend on the reliability of the method of service chosen. Where there is a sheriff's return of service, very strong evidence is necessary to impeach the return. In *Weinreich, Adm'x v. Walker*, 236 Md. 290, 203 A.2d 854 (1964), we said:

"It is true that there may be successful impeachment of service seemingly valid on the record but, in all the Maryland cases in which there has been, the circumstances have ranged from virtual demonstration of the lack of service (as in *German v. Slade*, 42 Md. 510, in which a defendant swore he had not been served and the deputy sheriff swore he had served the other defendants but not that one and had entered the notation of service by mistake) to clear and convincing evidence that there had not been service, in the form of corroboration of the defendant's claim that there had not been, by independent disinterested witnesses, plus lack of refutation, when challenged, by the sheriff or others. See, for example, *Master v. Master*, 223 Md. 618[, 166 A.2d 251] (the defendant wife swore she was working in Washington when she was said to have been summoned and was corroborated by her employer's payroll records and check); *Little v. Miller, supra* (the defendant, a seaman, swore he was on a voyage when he was said to have been served and official Coast Guard records supported him); *Harvey v. Slacum, supra* (husband and wife swore they had never been summoned and the deputy sheriff did not know whether he had served the father or his son, could not recognize the husband in the courtroom and could not remember the wife or say that he had summoned her); *Plummer v. Rosenthal*, 178 Md. 149[, 12 A.2d 530] (sworn denial by Earl Rosenthal of any service; sheriff identified the brother of the defendant, Irvin, as the man he had summoned); *Piedmont-Mt. Airy Guano Co. v. Merritt*, 154 Md. 226[, 140 A. 62] (father said to have been served at home of his son; sworn denial of service plus corroboration

> that the father never at any time was at son's home at the hour mentioned by the sheriff; summons for both father and son were found by son's wife on his bureau and sheriff was highly uncertain in attempted identification); *Pattison v. Hughes*, 80 Md. 559[, 31 A. 320] (four witnesses swore sheriff was completely drunk when he called and said only 'I want you to come Ellicott City'; sheriff did not deny it)."

Weinreich, 236 Md. at 297, 203 A.2d at 857.

Compliance with the statutory requirements for service in the instant case gives rise to a presumption that service was properly made. *Academy of IRM*, ___ Md. at ___, ___ A.2d at ___ (No. 3, 1996 Term, Slip Op. at 12). Hence, the burden is on the Miserandinos to show by clear and satisfactory evidence that they did not receive the mailed summons. The presumption of service afforded by first-class mail service ought to be the easiest presumption of service to rebut, but a mere affidavit of nonreceipt without corroborating facts does not necessarily rebut the presumption of receipt of mailed service. The trial judge did not find that the Miserandinos failed to receive the mailed service; in fact, the trial judge's finding that the Miserandinos were not denied due process may have encompassed a finding that they did receive the mailed service.

At a hearing to determine whether the Miserandinos received the mailed notice, the factors that the trial judge could weigh against the Miserandinos' denial of service are the presumption of proper mailing based on the affidavit of the Secretary of the Commonwealth of Virginia; the fact that the address was the correct home address

and that other mailed service in the Maryland case was received at that address; and any possible defenses the Miserandinos have to the Virginia action. The Miserandinos' possible defenses to the Virginia action are relevant to receipt of service based on the assumption that a person with a strong defense would be unlikely to ignore notice of a suit, but a person with no defense might be likely to ignore or forget about notice of a suit. Instead of refusing to give full faith and credit to the Virginia judgment, this Court should remand the case to give the Miserandinos an opportunity to rebut the presumption of service and to establish a denial of due process by proving an actual lack of notice and to proffer some defense to the Virginia action.

II.

The majority clearly defines what it sees as the issue in this case: "whether initial and original service of process by first-class mail is constitutionally sufficient to confer *in personam* jurisdiction over a nonresident individual in a long-arm jurisdiction case." ___ Md. ___, ___, ___ A.2d ___, ___ (1997) (Majority Op. at 7). It then recognizes the significant body of law and experience which is contrary to its holding when it says, "there is strong precedent and rather extensive experience that supports the use of first-class mail. . . . " ___ Md. at ___, ___ A.2d at ___ (Majority Op. at 19). The Court goes on to acknowledge that service by first-class mail is probably adequate to acquire jurisdiction in bankruptcy cases. But, according to the majority, first-class mail is not adequate to acquire jurisdiction over nonresidents in long-arm cases because it " 'is not reasonably calculated to reach

those who could easily be informed by other means at hand.' " ___ Md. at ___, ___ A.2d at ___ (Majority Op. at 24) (quoting *Mullane v. Central Hanover B. & T. Co.*, 339 U.S. 306, 319, 70 S.Ct. 652, 660, 94 L.Ed. 865, 876 (1950)). The majority seems to indicate that the only acceptable form of mail service is "certified mail with restricted delivery and return receipt stating to whom delivered and the date and address of delivery." ___ Md. at ___, ___ A.2d at (Majority Op. at 11) (citing Maryland Rule 2-121(a)). Hereinafter, I will refer to that kind of mail as "certified" mail, but the majority's requirement raises interesting questions, such as, would certified mail without restricted delivery, but which is signed for by the defendant, also be inadequate to acquire *in personam* jurisdiction in the same manner that ordinary mail actually delivered is insufficient to acquire *in personam* jurisdiction?

The majority suggests that if "certified" mail were substituted for first-class mail in Virginia's long-arm statute, the statute would be constitutional. This type of mail does not increase the likelihood that the mail will arrive at the address to which it was sent. If the address is correct, then ultimate receipt by the defendant is about as likely with first-class mail as with certified mail. The use of "certified" mail merely provides corroborative evidence that the material is actually sent, and further provides a record of dispatch and delivery. *See State v. Barnes*, 273 Md. 195, 209, 328 A.2d 737, 746 (1974) (stating that "[t]he only logical purpose to be served by directing that the notice be delivered by certified mail is to provide corroboration for bald assertions of having given such notice and a means of tracing and establishing the date of

receipt should a dispute concerning the delivery of notice arise"); *Holmes v. Randolph,* 610 N.E.2d 839, 845 (Ind. 1993) (stating "use of certified mail will provide a better record of receipt but not necessarily increase the probability the addressee will actually receive the notice. Certified mail is not insured, and 'is dispatched and handled in transit as ordinary mail.' U.S. Postal Service, Domestic Mail Manual subch. 912.11 (Issue 43: June 1992)").

Furthermore, the majority appears to equate first-class mail with the specific method of notice prescribed by Virginia's long-arm statute. In fact, the method of notice under the statute surpasses ordinary first-class mail in that, like "certified" mail, it too provides a record of dispatch. The statute requires the Secretary of the Commonwealth, rather than the plaintiff, to mail the notice and to certify the date and fact of mailing. Hence, a party disinterested in the litigation issues a record of dispatch. This feature enhances the reliability of the notice.

The majority's insistence on registered or certified mail also fails to take into account the fact that these types of mail are not available in certain instances. The postal regulations declare certain matters ineligible for registration. Mail which is "[a]ddressed to post offices to which it cannot be transported safely," for example, may not be registered. United States Postal Service, DOMESTIC MAIL MANUEL, Issue 48, S911.1.4, at S-19 (1995) (hereinafter "DMM"). In addition, mail that requires a signature is, as a practical matter, often unavailable in certain rural areas. Rural letter carriers must dismount from their vehicles in order to deliver registered, certified, or return-receipt mail only if the address is "on the line of travel, or

within one-half mile of the route and has a passable road leading to it." RURAL CARRIER DUTIES AND RESPONSIBILITIES § 313.3, at 63 (1991). If an individual lives farther than one-half mile from the rural route, a letter carrier need not deviate from his or her route. Therefore, return-receipt mail sent to such a remote address is undeliverable, unless the addressee takes affirmative steps to retrieve the mail at a post office. The Uniform Probate Code specifically references such difficulties with rural route delivery and in some circumstances permits service by ordinary mail. *See, e.g.*, Idaho Code § 15-4-303 (1996) (comment to official text) (stating that "[t]he provision for ordinary mail as a substitute for registered or certified mail is provided because . . . registered mail may not be available to reach certain addresses . . . and also certified mail may not be available as a process for service because of the method of delivery used [rural delivery and star route delivery]"); Mont. Code Ann. § 72-4-203 (1995) (same); N.D. Cent. Code § 30.1-25-03 (1995) (same); Utah Code Ann. § 75-4-303 (1996) (same).

In adopting a long-arm statute that provides for service by first-class mail the Virginia legislature concluded that this method is reasonably calculated to inform nonresidents of the pendency of a judicial proceeding against them. This Court should accept the general validity of that determination, and only deny full faith and credit if the mailed process has not been received. Notice by first-class mail certainly has been upheld in a number of cases, and ample authority exists to support Virginia's decision to employ it in the context of notice to nonresidents who,

because of real estate transactions or other contacts with the Commonwealth, are amenable to service.[1]

III.

My primary difficulty with the majority's approach is that it seems to assume that first-class mailed service (hereinafter "mailed service") is constitutionally permissible to establish *in personam* jurisdiction in some types of law suits, but not others. Under the majority's approach, if mailed service is not constitutionally permissible in a particular type of lawsuit, then statutorily permissible mailed service does not establish *in personam* jurisdiction even if received. The majority's test for determining when mailed service is permissible is at best vague and uncertain, yet the majority does acknowledge that mailed service is adequate in some causes of action, such as bankruptcy. A better approach would be to hold that mailed service is constitutionally permissible in any form of action, and the decision as to when it may be authorized should be left to the legislative or rule making authorities.[2] Some legislatures may choose to adopt a statute that comports with merely the minimum requirements of due process, while others may choose to

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[1] In the instant action, the Miserandinos do not dispute that they had sufficient contacts with the Commonwealth to otherwise subject them to the jurisdiction of the Virginia courts.

[2] Even if first-class mail service is permitted, litigants should be cautious in using this method of service because if the defendant does not respond, any judgment might be vulnerable to a due process attack. It is easier to prove nonreceipt of first-class mailed notice than it is to prove nonreceipt of certified mail notice where there is a written return receipt.

enhance the constitutional minimum. As one legal commentator has observed:

> "Some service-by-mail statutes require only the satisfaction of minimum constitutional standards. Such statutes permit the use of ordinary mail. . . .
>
> * * *
>
> In contrast . . . , most service-by-mail statutes contain at least some requirements that are not constitutionally mandated. For example, many statutes demand that the plaintiff use registered or certified mail. . . . " (Footnotes omitted).

Service of Process by Mail, 74 Mich. L. Rev. 381, 385-86 (1975).

There are numerous Maryland rules and statutes that authorize service by first-class mail. These rules and statutes may be of questionable validity as a result of the Court's decision in the instant case. A few examples should suffice.

To begin with, it is ironic that the Maryland proceedings in the instant case were initiated by service on the Miserandinos by statutorily authorized first-class mail service. The Uniform Enforcement of Foreign Judgments Act, codified in Maryland at § 11-801 *et seq.* of the Courts and Judicial Proceedings Article, provides in § 11-803:

> "(a) *Addresses of debtor and creditor to be furnished.* – At the time a foreign judgment is filed, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit showing the name and last

known post office address of the judgment debtor and the judgment creditor.

(b) *Clerk to mail notice of filing to debtor.* – (1) The clerk promptly shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall note the mailing in the docket."

Notice of the Maryland action against the Miserandinos, therefore, was addressed and sent to the same address in the same manner as was used to obtain service in the Virginia action; yet, this Court today holds that this method of notice is violative of due process.

Several other statutes similarly provide for service of process by first-class mail. As the majority notes, "[t]he Maryland legislature has recently enacted a bill that permits the giving of first notices in an estate case by first-class mail. . . . " ___ Md. at ___, ___ A.2d ___ (Majority Op. at 17). This provision is codified in the Maryland Code (1974, 1996 Supp.), Estates and Trusts Article, § 1-103. Unfortunately, doubt is cast on the constitutionality of that statute when the Court states that "[t]his Court has not had an opportunity to pass upon the constitutional sufficiency of notice by first-class mail in this context, and we intimate no opinion on that question." ___ Md. at ___, ___ A.2d at ___ (Majority Op. at 18).

Title 6 of the Maryland Rules governs all matters in the orphan's courts and before the registers of wills relating to the settlement of decedents' estates. Rule 6-125 of that title was recently adopted by this Court and is the general rule on service. Rule 6-125 provides:

"**RULE 6-125. SERVICE**

(a) Method of Service – Generally. – Except where these rules specifically require that service shall be made by certified mail, *service may be made by personal delivery or by ordinary mail.* Service by certified mail is complete upon delivery. Service by ordinary mail is complete upon mailing. If a person is represented by an attorney of record, service shall be made on the attorney pursuant to Rule 1-321. Service need not be made on any person who has filed a waiver of notice pursuant to Rule 6-126." (Emphasis added).

Did this Court recently adopt an unconstitutional rule? I doubt it.

Other actions commenced by first-class mail are now questionable because first-class mail may be insufficient to acquire *in personam* jurisdiction. These include judicial review actions in workers' compensation cases initiated by first-class mail service. Rule 7-202(d)(2) provides:

"(2) *Service by Petitioner in Workers' Compensation Cases.* – Upon filing a petition for judicial review of a decision of the Workers' Compensation Commission, the petitioner shall serve a copy of the petition by first-class mail on the Commission and each other party of record in the proceeding before the Commission."

Even process initiating criminal proceedings may be served on a defendant by first-class mail under Rule 4-212. That rule provides:

"**(a) General.** – When a charging document is filed or when a stetted case is rescheduled pursuant to Rule 4-248, a summons

or warrant shall be issued in accordance with this Rule. Title 5 of these rules does not apply to the issuance of a summons or warrant.

(b) Summons – Issuance. – Unless a warrant has been issued, or the defendant is in custody, or the charging document is a citation, a summons shall be issued to the defendant (1) in the District Court, by a judicial officer or the clerk, and (2) in the circuit court, by the clerk. The summons shall advise the defendant to appear in person at the time and place specified or, in the circuit court, to appear or have counsel enter an appearance in writing at or before that time. A copy of the charging document shall be attached to the summons. A court may order the reissuance of a summons.

(c) Summons – Service. – *The summons and charging document shall be served on the defendant by mail or by personal service* by a sheriff or other peace officer, as directed (1) by a judicial officer in the District Court, or (2) by the State's Attorney in the circuit court." (Emphasis added).

These statutes and rules are just some of the first-class mail provisions that may be cast in doubt by the majority's opinion in the instant case. Do these statutes and rules have "special or unique circumstances that would justify relaxation of the ordinary and available methods of service . . . ?" ___ Md. at ___, ___ A.2d at ___ (Majority Op. at 22). We do not know, and the test for special and unique circumstances seems, at best, murky. Apparently bankruptcy proceedings probably pass the test, estate and probate proceedings might pass the test, but long-arm suits do not pass the test.

A better rule would be that, where a permissible method of service of process reasonably designed to reach the defendant is used but does not reach the defendant through no fault or lack of diligence of the defendant and where a judgment is entered against the defendant based on that service of process, the defendant will be deemed to have been denied due process when the failure to receive service prevented the assertion of a viable defense to the cause of action. Of course a heavy burden will be placed upon the defendant to prove nonreceipt of service. The amount of proof necessary to establish nonreceipt of service will depend upon the method of service chosen by the plaintiff. This rule is entirely consistent with this Court's prior holdings.[3]

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[3] It is interesting to speculate that the majority might have held first-class mail service to be constitutional had the Virginia statute required the Secretary of the Commonwealth to give notice by registered mail return-receipt requested, restricted delivery, but the Secretary only gave notice to the Miserandinos by first-class mail, as in the instant case. This Court has indicated that the use of first-class mail is adequate, even though the statute requires registered mail, if the first-class mail is actually received. This Court has said:

> "even when a statute requires that a notice be given by registered mail it has been held that notice actually received, though by regular mail, is valid. *See* 58 Am.Jur.2d, *Notice* § 27 (1971); *Crummer v. Whitehead*, 230 Cal. App.2d 264, 40 Cal. Rptr. 826 (1964); *Volandri v. Taylor*, 124 Cal. App. 356, 12 P.2d 462 (1932); *Steele v. Trustees of Pittsburg Schools*, 121 Cal. App. 419, 9 P.2d 217 (1932); *Drake v. Comptroller of City of New York*, 278 App. Div. 317, 104 N.Y.S.2d 774 (1st Dept. 1951)."

State v. Barnes, 273 Md. 195, 210, 328 A.2d 737, 746 (1974).

A.

The majority and I agree that:

> "At a minimum, the notice must be 'reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' "

___ Md. at ___, ___ A.2d at ___ (Majority Op. at 8) (quoting *Mullane*, 339 U.S. at 314, 70 S.Ct. at 657, 94 L.Ed. at 873). First-class mail meets that test, but it is up to the legislative or rule making body to authorize such service, and when authorized, it should be up to the litigants to decide whether to use first-class mail or an easier-to-prove form of service that would better insulate judgments from later collateral attack for nonreceipt of service.[4]

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[4] First-class mail service would be less expensive and less burdensome to plaintiffs as well as defendants and ought to be available as an optional form of service in many causes of action. Plaintiffs in some instances, however, should prefer "certified" over first-class mail, not because the former increases the probability of service, but because it increases the evidence of service and makes any judgment less vulnerable to a later challenge. Whether first-class mail is more or less reliable than "certified" mail often depends upon the individual to be served, rather than the nature of the cause of action. If "certified" mail is sent to the home address of a defendant or defendants who work during postal delivery hours or travel frequently, and who find it too difficult or inconvenient to go to the post office, such mail will often be returned as "unclaimed." A prospective plaintiff who wishes to serve a working defendant at a home address may wish to use ordinary mail and to consider later a back-up form of service if the defendant does not respond and there may be some doubt about receipt of service.

The law presumes that a letter properly mailed is in fact received. *Mohr v. Universal C.I.T. Corp.*, 216 Md. 197, 204, 140 A.2d 49, 51 (1958) (referring to "the universal rule to the effect that the receipt of a letter by the addressee is presumed, when it is shown that the letter, properly stamped and addressed, was posted in the mails"). Although current statistics are unavailable, a law review article published in 1987 reported that:

> "[R]ecords of complaints of nondelivery of all first-class mail show an annual figure of approximately 44,000 claims of nonreceipt out of a total first class mail volume of over 72 billion pieces, for a rate of .00006 of 1 percent (or about 1 claim for every 2 million pieces of mail). Actual loss experience is presumably considerably less than even this tiny fraction of mail volume." (Footnotes omitted)

Kent Sinclair, *Service of Process: Rethinking the Theory and Procedure of Serving Process Under Federal Rule 4(c)*, 73 VA. L. REV. 1183, 1206 (1987) (citing United States Postal Serv., ANNUAL REPORT OF THE POSTMASTER GENERAL 26 (1985)). The Supreme Court has referred to the mails as " 'an efficient and inexpensive means of communication,' upon which prudent men will ordinarily rely in the conduct of important affairs," *see Greene v. Lindsey*, 456 U.S. 444, 455, 102 S.Ct. 1874, 1880, 72 L.Ed.2d 249, 258 (1982) (citation omitted), and has recognized mail service as a constitutionally sufficient means of providing notice in a number of cases. *See Tulsa Collection Servs. v. Pope*, 485 U.S. 478, 490, 108 S.Ct. 1340, 1347, 99 L.Ed.2d 565, 578 (1988) (stating that "[w]e have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably

calculated to provide actual notice"). In *Wuchter v. Pizzuti*, 276 U.S. 13, 48 S.Ct. 259, 72 L.Ed. 446 (1928), for example, the Supreme Court assessed the validity of a New Jersey statute that permitted notice to nonresident motorists to be accomplished by service upon the Secretary of State. The Court observed that this method of service "would not be fair or due process *unless* such officer or the plaintiff is required to *mail the notice to the defendant, or to advise him, by some written communication,* so as to make it reasonably probable that he will receive actual notice." *Wuchter*, 276 U.S. at 19, 48 S.Ct at 260, 72 L.Ed. at 449 (emphasis added). Because the New Jersey statute failed to provide for such communication by mail, the Court found the statute to be unconstitutional. The method of notification provided under the Virginia statute, in contrast, appears to conform with *Wuchter's* precise requirements; service was made upon the Secretary of the Commonwealth, who then mailed the notice to the defendants.

The Supreme Court made similar reference to the mail system as an acceptable method of notification in *Schroeder v. New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255 (1962), a case which involved a municipality's decision to divert a portion of a river. With regard to landowners whose property rights would be adversely affected by this action, the relevant statute required notice by publication. *Schroeder*, 371 U.S. at 209, 83 S.Ct. at 280-81, 9 L.Ed.2d at 257. The Supreme Court found that while newspaper publications and posted notices did not provide the "quality of notice" required by the Due Process Clause, the municipality's constitutional obligation would have been discharged by "the mailing of a single

letter." *Schroeder*, 371 U.S. at 213-14, 83 S.Ct. at 283, 9 L.Ed.2d at 260. *See also Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800, 103 S.Ct. 2706, 2712, 77 L.Ed.2d 180, 188 (1983) (stating that "[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition. . . . " in the context of notice to mortgagee of tax sale).

In *Mullane, supra*, the Supreme Court specifically referenced *ordinary* mail as an acceptable means of providing notice. At issue in *Mullane* was the validity of notice by publication to trust fund beneficiaries of a judicial settlement of fund accounts. 339 U.S. at 307-09, 70 S.Ct. at 654-55, 94 L.Ed. at 869-71. Some of the beneficiaries were not residents of the state. *Mullane*, 339 U.S. at 309, 70 S.Ct at 655, 94 L.Ed. at 871. The Court held that notice by publication was constitutionally inadequate, and stated that those beneficiaries whose whereabouts were ascertainable should have been informed of the accounting "at least by *ordinary* mail."[5] *Mullane*, 339 U.S. at 318, 70 S.Ct. at 659, 94 L.Ed. at 875 (emphasis added).

In assessing the minimal requirements of due process, therefore, the Supreme Court has repeatedly referenced the ordinary mail system as a constitutionally sufficient mechanism by which to provide notice. Virginia's decision to permit service by mail, therefore, seems in accord with the minimum requirements of due process as defined by the Supreme Court.

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[5] For those beneficiaries whose whereabouts could not be ascertained with due diligence, notice by publication was held to be sufficient. *Mullane v. Central Hanover B. & T. Co.*, 339 U.S. 306, 318, 70 S.Ct. 652, 659, 94 L.Ed. 865, 875 (1950).

B.

Service by ordinary mail also has been upheld by numerous lower courts. Service by first-class mail in a bankruptcy proceeding, for example, withstood direct constitutional attack in *Matter of Park Nursing Center, Inc.*, 766 F.2d 261 (6th Cir. 1985). Federal Bankruptcy Rule 7004 provides in pertinent part:

> "**(b) Service by first class mail.** Except as provided in subdivision (h), in addition to the methods of service authorized by [certain Federal Rules of Civil Procedure], service may be made within the United States by *first class mail* postage prepaid as follows:
>
> > (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession."

FED. R. BANKR. 7004(b)(1) (1994, 1996 Cum.Supp.) (emphasis added). A debtor, against whom a default judgment in a Chapter 11 bankruptcy proceeding had been entered, challenged the constitutionality of an earlier version[6] of this rule on the grounds that: (1) due process requires personal service; (2) a method of service more likely to accomplish service should be attempted before resorting to first-class mail; (3) safeguards to

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[6] FED. R. BANKR. 704(c)(1) similarly permitted service "by mailing a copy of the summons, complaint, and notice to [an individual's] dwelling house or usual place where he regularly conducts his business or profession."

ensure receipt of a first-class letter were lacking; and (4) the rule contained no requirement that the address on the envelope be correct. *Park Nursing Center*, 766 F.2d at 263-64. In rejecting these assertions, the United States Court of Appeals for the Sixth Circuit noted that "*Mullane* does not require the very best means of serving process, only a means that is reasonably calculated to reach the party." *Park Nursing Center*, 766 F.2d at 264. In light of other rules of civil procedure that provide a mechanism by which to set aside a default judgment, the court concluded that the rule in question satisfies due process. *Park Nursing Center*, 766 F.2d at 263-64. Bankruptcy court decisions subsequent to *Park Nursing Center* have consistently supported the constitutionality of service by first-class mail. *See, e.g., In Re M&L Business Mach. Co., Inc.*, 190 B.R. 111, 115-16 (D. Colo. 1995) (observing that "strict compliance with Rule 7004 serves to protect due process rights. . . . "); *Leavell v. Karnes*, 143 B.R. 212, 217 (S.D. Ill. 1990) (stating that "[s]ervice under Rule 7004(b) comports with the procedural due process requirements identified by the Supreme Court in *Mullane*. . . . ").

The Minnesota Supreme Court, similarly, upheld the constitutionality of a statute permitting ordinary mail service upon a nonresident motorist in *Schilling v. Odlebak*, 224 N.W. 694 (Minn. 1929). The statute at issue was strikingly similar to Virginia's long-arm statute. Specifically, it allowed substituted service upon the Secretary of State " 'provided, that notice of such service and a copy of the process are within ten days thereafter sent *by mail* by the plaintiff to the defendant at his last known address and that the plaintiff's affidavit of compliance

with the provisions of this act are attached to the summons.' " *Schilling*, 224 N.W. at 695 (quoting L. 1927, p. 557, c. 409, 1 Mason Minn. St. § 2684-8) (emphasis added). Relying in part on *Wuchter, supra*, the court concluded that "it is reasonably certain that the defendant will receive actual notice, and that adequate opportunity is afforded him to defend." *Schilling*, 224 N.W. at 696.

In a more recent decision, the Indiana Supreme Court upheld a statute that permitted notice of the impoundment and potential disposal of abandoned vehicles by first-class mail. *Holmes, supra*. The plaintiff in *Holmes* contended that this method of notification was constitutionally flawed in that it "fail[ed] to provide notice in the best available manner to assure delivery to the known owner prior to depriving the owner irrevocably of a property interest." 610 N.E.2d at 840. Although the trial court entered summary judgment in the plaintiff's favor, based in part on its conclusion that due process requires certified mail, return receipt requested, *see id.*, the Indiana Supreme Court reversed that judgment. *Holmes*, 610 N.E.2d at 846. The court noted that "[t]he notice by first class mail given to owners of abandoned vehicles must be viewed in light of the Supreme Court's acknowledgement in dicta that 'the mails provide an "efficient and inexpensive means of communication," . . . upon which prudent men will ordinarily rely in the conduct of important affairs.' " *Holmes*, 610 N.E.2d at 844 (quoting *Greene v. Lindsey*, 456 U.S. at 455, 102 S.Ct. at 1880, 72 L.Ed.2d at 258, in turn quoting *Mullane*, 339 U.S. at 319, 70 S.Ct. at 660, 94 L.Ed. at 876). Applying the *Mathews v. Eldridge* test, the court concluded that the method of notification prescribed by the statute satisfied due process, *see*

Holmes, 610 N.E.2d at 845 (observing that "[t]he risk that failure of . . . notice will lead to deprivation of an individual's vehicle is modest"), and that "[f]irst class mail notice sent to the record address of the vehicle owner is reasonably calculated to apprise the owner of the pendency of abandoned vehicle proceedings." *Holmes*, 610 N.E.2d at 846. See also *Service of Process by Mail*, 74 Mich. L. Rev. at 382, where the author concludes that "service by mail without a return-receipt requirement complies with the due process clauses of the fifth and fourteenth amendments," (citations omitted), and further "concludes that, in light of the procedures available to a defendant to challenge service [by ordinary mail] and to reopen default judgments entered against him, the requirement of a signed receipt is unduly harsh on plaintiffs." *Id.*

Service by ordinary mail clearly satisfies due process in a variety of contexts. Virginia has apparently concluded that the use of first-class mail under its long-arm statute is "reasonably calculated" to reach defendants. Maryland courts should defer to that assessment and limit their inquiry to whether the Miserandinos were afforded due process in the application of this statutory method of service. Since first-class mail is "reasonably calculated" to reach a recipient, if the Miserandinos actually received the mailed service authorized by the Virginia statute, they have literally received all the process they were due. I respectfully dissent.

Judges Rodowsky and Raker have authorized me to state that they join in the views expressed in this dissenting opinion.

GERALD P. MISERANDINO and KAREN L. MISERANDINO	*	In the Court of Appeals of Maryland
	*	No. 93
v.	*	September Term, 1995
	*	
RESORT PROPERTIES, INC. et al.	*	
	*	

ORDER

The Court having considered the motions for reconsideration filed by Resort Properties and the Commonwealth of Virginia, the petition to intervene, the motion for special admission, and the answer to the petition to intervene in the above-captioned case, it is this 8th day of April, 1997,

ORDERED, by the Court of Appeals, that the motion for special admission and the petition to intervene be, and they are hereby, granted and it is further,

ORDERED, that the motions for reconsideration, be, and they are hereby, denied.

/s/ Robert M. Bell
Chief Judge

COURT OF APPEALS OF MARYLAND

CORRECTION

April 8, 1997
(Date)

Please make the following correction in the opinion in the case of

Gerard P. Miserandino and Karen L. Miserandino

v.

Resort Properties, Inc. et al.

No. 93, *September Term, 1995*

Please replace page one of the majority opinion with the one attached.

Thank you,

Yours truly, Illegible

This case involves a constitutional attack by judgment debtors against a judgment entered against them by a state trial court in Virginia. The collateral attack on the judgment was made in the Circuit Court for Carroll County, Maryland, where the judgment creditor sought to enforce the judgment. The defendants challenge the basis for the exercise of long-arm personal jurisdiction by the Virginia court, as well as the constitutional sufficiency of the Virginia statutory scheme for the giving of notice to nonresidents proceeded against under that Commonwealth's long-arm jurisdiction statute.

I. FACTS

Pursuant to the Uniform Enforcement of Foreign Judgments Act, Sections 11-801 to 807 of the Courts and Judicial Proceedings Article, Md. code (1957, 1989 Repl. Vol., 1992 Cum. Supp.), Resort Properties, Inc. (Resort), filed a judgment against Gerard and Karen Miserandino, (defendants) in the Circuit Court for Carroll County on June 3, 1993. The notice of filing of judgment, mailed by a court clerk to the defendants, simply informed them that a judgment of $4,211.82 against them had been filed by Resort. Thereafter, the defendants filed a motion to strike the entry of the foreign judgment. From their inspection of the court's file, the defendants knew that the judgment was obtained in Warren County, Virginia and that Resort was the assignee of North Fork Shenandoah Vacations, Inc.

In the motion, the defendants alleged by affidavit made on personal knowledge that they were not served with process, had no notice, and did not appear in the Virginia action. They alleged further, that:

> Defendants were not subject to the jurisdiction of said Virginia Court in said action, nor was either of them. . . . Said foreign judgment is invalid, null, void and of no effect since said Virginia Court lacked *in personam* jurisdiction over defendants, or either of them, in the action in which that judgment was entered.

Specifically, the motion alleged that neither of the defendants resides in Virginia,

GERARD P. MISERANDINO AND KAREN L. MISERANDINO	*	IN THE COURT OF APPEALS OF MARYLAND
	*	No. 93
v.	*	September Term, 1995
RESORT PROPERTIES, INC. et al.	*	

MANDATE

TO THE HONORABLE THE JUDGES OF THE COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS the case of *Gerard P. Miserandino and Karen L. Miserandino v. Resort Properties, Inc. et al.* came before you and wherein the judgment of the said Court of Special Appeals was duly entered on April 11, 1995, as appears from the transcript of the record of the said Court of Special Appeals which was brought into the Court of Appeals by virtue of a writ of certiorari dated October 16, 1995, and

WHEREAS in the September Term, 1995, the said cause came on to be heard by the Court of Appeals of Maryland;

ON CONSIDERATION WHEREOF, it was ordered and adjudged on February 12, 1997, by the Court of Appeals of Maryland, that the judgement of the Court of Special Appeals be reversed; case remanded to that Court with directions to reverse the judgment of the Circuit Court for Carroll County; costs in this Court and in the Court of Special Appeals to be paid by respondent.

NOW, THEREFORE, THIS CAUSE IS REMANDED to you in order that such proceedings may be had in the

cause in conformity with the judgment of this Court as accord with right and justice, and the constitution and laws of Maryland, the said writ notwithstanding.

WITNESS The Honorable Robert M. Bell, Chief Judge of the Court of Appeals of Maryland, this 8th day of April, 1997.

/s/ Alexander L. Cummings
Clerk
Court of Appeals of Maryland

Filing fee – Court of Special Appeals	$ 50.00
Filing fee – Petition	50.00
Petitioner's brief	384.00
Appearance fee	10.00
Respondents' brief	196.80
Appearance fee	10.00
	700.80
Motion for reconsideration	50.00
	$750.80

COSTS SHOWN ON MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

IN THE COURT OF APPEALS OF MARYLAND

GERALD P. MISERANDINO and KAREN L. MISERANDINO,

Appellants,

v.

RESORT PROPERTIES, INC., et al.

Appellees,

and

COMMONWEALTH OF VIRGINIA, *ex rel.* SECRETARY OF THE COMMONWEALTH,

Intervenor/Appellee.

No. 93 September Term 1995

(Filed March ___, 1997)

PETITION TO INTERVENE AND MOTION FOR RECONSIDERATION

COMES NOW the COMMONWEALTH OF VIRGINIA, *ex rel.* Secretary of the Commonwealth (the "Commonwealth"), by counsel, and petitions this Court for leave to intervene in this action. The Commonwealth also moves this Court, pursuant to Rule 8-605 of the Maryland Rules of Procedure, for reconsideration of the decision which was rendered by this Court in this case on February 12, 1997. In support of its Petition for Intervention and Motion for Reconsideration, the Commonwealth states as follows:

PETITION TO INTERVENE

1. On February 24, 1997, the Attorney General for the Commonwealth ("the Virginia Attorney General")

received a letter from the law firm of Poppleton, Garrett & Polett [sic], P.C., advising him of the decision which was reached by this Court in connection with this case on February 12, 1997 ("the Decision"). In the Decision, this Court held that the method for service of process as set forth in Va. Code § 8.01-329 is "constitutionally inadequate." This Court has also refused to give full faith and credit to a Virginia judgment which was obtained in accordance with the procedures set forth in Va. Code § 8.01-329.

2. The Commonwealth was not made aware of this Court's consideration of the constitutionality of Va. Code § 8.01-329 until the Virginia Attorney General received the letter referenced above from Poppleton, Garrett & Polott, P.C., counsel for the Respondents in this action.

3. Upon information and belief, the Respondents intend to file a Motion for Reconsideration of the Decision in accordance with Rule 8-605 of the Maryland Rules of Procedure. As an Applicant for Intervention, the Commonwealth also submits its own Motion for Reconsideration (see below).

4. The Commonwealth has a deep and abiding interest in defending the constitutionality of its statutes and in maintaining the enforceability of judgments which are obtained within its courts. The Commonwealth also seeks leave to intervene in this action in order to protect the public interest of its citizens/creditors in being able to obtain judgments against their debtors which are enforceable in sister states. The ruling already has been

reported in the press as likely to "wreak havoc" on creditor practice in Virginia. *See Virginia Lawyer's Weekly,* Vol. XI, No. 39, p. 1 (March 3, 1997).

5. Pursuant to Rule 2-214 of the Maryland Rules of Procedure, this Court permits the state of Maryland and the United States to intervene in actions which challenge the constitutionality of Maryland or federal statutes.[1]

6. Pursuant to Rule 3-405 of the Maryland Rules of Procedure, the Maryland Attorney General is entitled to notice of all actions filed within the courts of Maryland which allege that any Maryland statute is unconstitutional. Upon being advised of such a claim, the Maryland Attorney General is afforded the opportunity to submit his views in writing regarding the constitutionality of the challenged provision or to intervene in the action in accordance with Rule 2-214. Federal courts follow a similar procedure whenever the constitutionality of a state statute is called into question within a federal court. *See* 28 U.S.C. § 2403(b).

Furthermore, Maryland's Rule of Procedure with respect to intervention, Rule 2-214, was derived from Federal Rule of Civil Procedure 24. FRCP 24 provides in pertinent part:

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[1] This Rule is included within the portion of the Maryland Rules of Procedure pertaining to the Circuit Courts of Maryland. An identical provision is included in the Rules with respect to Maryland's District Courts. See Rule 3-214 of the Rules of Procedure. There is no comparable provision relating specifically to the Maryland Court of Appeals. Principles of consistency and fairness counsel that the same principles apply when seeking to intervene at the appellate level.

> When the constitutionality of any statute of a State affecting the public interest in [sic] drawn in question in any action in which the State . . . is not a party, the court shall notify the attorney general of the State as provided in Title 28, U.S.C. § 2403.

7. As stated previously, the Commonwealth was only recently advised that the constitutionality of one of its statutes has been called into question by this Maryland state court action. In the interest of fairness and comity, the Commonwealth requests that it be afforded the same opportunity to intervene in this action to defend the constitutionality of Va. Code § 8.01-329 in accordance with the principles articulated within Title 28, U.S.C. § 2403, FRCP 24, and Rule 2-214 of the Maryland Rules of Procedure.

8. The parties will not be prejudiced by the Commonwealth's intervention in this case. The Respondents do not oppose the Commonwealth's Petition to Intervene. Further, unless or until this Court reverses the Decision, the Virginia judgment at issue in this proceeding will not be enforceable in Maryland. Therefore, the Petitioners will not be prejudiced by the Commonwealth's intervention.

9. The Commonwealth also seeks leave to intervene in this action in order to preserve its ability to obtain appellate review of the Decision in the even that the Court denies the Motions for Reconsideration of the Respondents and the Commonwealth.

MOTION FOR RECONSIDERATION

1. As discussed above, the Decision of this Court regarding the constitutionality of the method of service set forth in § 8.01-329 and the enforceability of judgments obtained pursuant to § 8.01-329 in Maryland was reached without consideration of the arguments which the Commonwealth can submit in defense of its statute.

2. The composition of this Court has changed since the Decision was delivered in this case. The Decision was rendered by a closely divided court close (4 to 3), and it is conceivable that this change in composition may have a bearing on the Court's reconsideration of the issues presented within this case.

3. In the interest of comity, this Court should reconsider its prior Decision now that the Commonwealth has been advised of the challenge to its statute and now that the Commonwealth has expressed its desire to defend its statute. *See* Rule 8-511 of the Maryland Rules of Procedure (recognizing this Court's policy of considering the views of interested persons/entities, who are not parties to a particular proceeding, by way of *amicus* briefs).

4. With respect, the Commonwealth believes that the Decision of the majority of this Court regarding the constitutionality of the method of service provided by Va. Code § 8.01-329 was erroneous. Virginia's statute provides sufficient procedural safeguards to ensure that the due process rights of non-resident litigants are protected in that it is "reasonably calculated . . . to apprise interested parties of the pendency of the action and to afford them an opportunity to present their applications." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950).

These procedural safeguards include a provision within the Virginia Code which allows litigants to challenge Virginia judgments when they claim not to have received actual notice of a Virginia proceeding against them. *See* Va. Code § 8.01-428.[2] In addition, under Virginia's procedure, the Secretary of Commonwealth is required to certify that she has forwarded the relevant pleading to the non-resident defendant's last known address. In effect, therefore, the certificate from the Secretary of the

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[2] In the Decision, this Court reasoned that the protections afforded by Va. Code § 8.01-428 do not save the defective means of service of process set forth in § 8.01-329. This Court relied upon the Supreme Court's opinion in *Armstrong v. Manzo*, 380 U.S. 545 (1965), when reaching this conclusion. With respect, the circumstances which led to the violation of due process recognized by the Supreme Court in *Armstrong, supra,* are clearly distinguishable from Virginia's statutory procedure for challenging default judgments.

In *Armstrong,* the Supreme Court concluded that a father's right to due process was violated when the [sic] he failed to receive notice of a Texas proceeding terminating his parental rights. Even though the child's mother was aware of the father's address, she did not attempt to provide him with notice of the termination proceeding. In a subsequent proceeding, the father was able to obtain the reinstatement of his parental rights. Nevertheless, the Supreme Court concluded that the second proceeding was not sufficient to "cure" the previous violation of his right to due process.

In contrast, pursuant to Va. Code § 8.01-329, plaintiffs are required to provide notice to non-resident defendants by mail (*via* the Secretary of the Commonwealth who certifies that she has sent the notice to the defendant's last known address). If for some reason a non-resident defendant does not receive the notice, he can challenge any judgment which has been entered against him pursuant to the procedure set forth in Va. Code § 8.01-428.

Commonwealth serves the same purpose as a certified mail receipt. *See State v. Barnes*, 273 Md. 195, 209, 328 A.2d 737, 746 ("[t]he only logical purpose to be served by directing that the notice by [sic] delivered by certified mail is to provide corroboration for bald assertions of having given such notice and a means of tracing and establishing the date of receipt should a dispute concerning delivery of notice arise").

5. Furthermore, there is no authority to support this Court's conclusion that certified or registered mail is required to afford due process when seeking to obtain *in personam* jurisdiction over a litigant. This is particularly true when a state, such as the Commonwealth, has a valid interest in providing an inexpensive,[3] but nonetheless efficient, mechanism for its citizens to obtain service of process on non-resident persons/entities who chose to do business or hold property within a state's boundaries. *See, e.g., Matter of Park Nursing Center, Inc.*, 766 F.2d 261 (6th Cir.1985); *In Re M & L Business Mach. Co., Inc.*, 190 B.R. 111 (D. Colo. 1995) (upholding service by mail in bankruptcy cases).

6. Moreover, no evidence is presently before this Court to support the conclusion that the United States mail constitutes an unreliable method of advising persons of the claims which have been asserted against them.

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[3] The Secretary of the Commonwealth processes approximately 975 requests for service of process on non-residents per week – over 50,000 per year. A requirement that each of these requests be forwarded by registered or certified mail to non-residents would substantially increase the workload, staffing needs, and costs of the Secretary of the Commonwealth.

Indeed, the United States Supreme Court has concluded otherwise. *See Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 489 (1988) (reflecting that the Supreme Court has "repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice").

7. Lastly, as Judges Chasanow, Rodowsky and Raker correctly noted in their dissent, there is also no evidence currently before this Court to support the conclusion that the Petitioners did not receive actual notice of the Virginia action against them. If the Petitioners actually received notice of the Virginia proceeding, then it is clear that the Virginia court had personal jurisdiction over them when rendering judgment, and this Court should give full faith and credit to that judgment. *See Mullane*, 339 U.S. at 318-320; *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983) (recognizing that when actual notice has been achieved, due process requirements have been met).

For all of these reasons, the Commonwealth believes that the Court's Decision regarding the constitutionality of the procedural methods set forth in Va. Code § 8.01-329 was incorrect, and, therefore, should be reconsidered. The Commonwealth is willing and desires to submit additional briefs and argument to the Court on all the issues touched upon in this Motion.

WHEREFORE, the Commonwealth of Virginia, *ex rel.* Secretary of the Commonwealth, respectfully requests that she be granted leave to intervene in this action in order to protect the integrity of Virginia's statutory mechanism of service of process and the public interest of the

Commonwealth's citizens/creditors. The Commonwealth also respectfully requests that this Court reconsider its earlier decision in this case, and such further briefing and argument as may be appropriate to affirm the judgment of the Court of Special Appeals.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA,
ex rel. SECRETARY OF THE
COMMONWEALTH

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, first class, postage prepaid, this 13 day of March, 1997 to Benjamin Lipsitz, Attorney for Petitioners.

/s/ Andrew R. Polott

IN THE COURT OF APPEALS OF MARYLAND

GERALD MISERANDINO and KAREN MISERANDINO,

Petitioners,

v.

RESORT PROPERTIES, INC.,

Respondent,

and

COMMONWEALTH OF VIRGINIA, *ex rel.* SECRETARY OF THE COMMONWEALTH,

Intervenor-Respondent.

NO. 93
September Term 1995

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT the Intervenor-Respondent, the Commonwealth of Virginia, *ex rel.* Secretary of the Commonwealth ("the Commonwealth"), hereby appeals to the United States Supreme Court from the Order entered in the above-referenced action on April 8, 1997, by the Court of Appeals of Maryland. The Order from which this appeal is taken refuses to grant the Commonwealth's motion to reconsider, fails to give full faith and credit to a Virginia judgment obtained against non-resident defendants in the manner specified by Va. Code § 8.01-329; and calls into question the constitutionality of a Virginia statute.

Respectfully submitted,
COMMONWEALTH OF VIRGINIA,
ex rel. SECRETARY OF THE COMMONWEALTH

By: /s/ A. Ann Berkebile
Counsel

James S. Gilmore, III
Attorney General of Virginia

Gregory E. Lucyk
Senior Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was sent by first class, postage prepaid mail this 21st day of April, 1997, to Benjamin Lipsitz, Esquire, 100 Church Lane, Baltimore, Maryland 21208, and Andrew R. Polott, Esquire, Poppleton, Garrett & Polott, 6430 Rockledge Drive, Suite 500, Bethesda, Maryland 20817.

/s/ A. Ann Berkebile

AMENDMENT V —

RIGHTS OF ACCUSED IN CRIMINAL PROCEEDINGS

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

SECTION 1.

CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2.

APPORTIONMENT OF REPRESENTATIVES IN CONGRESS

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens

shall bear to the whole number of male citizens twenty-one years of age in such state.

SECTION 3.

PERSONS DISQUALIFIED FROM HOLDING OFFICE

No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each house, remove such disability.

SECTION 4.

WHAT PUBLIC DEBTS ARE VALID

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5.

POWER TO ENFORCE THIS ARTICLE

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.[1]

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[1] Proposed by Congress on June 13, 1866, and declared ratified on July 28, 1868.

§ 8.01-328.1 When personal jurisdiction over person may be exercised. – A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this Commonwealth;

2. Contracting to supply services or things in this Commonwealth;

3. Causing tortious injury by an act or omission in this Commonwealth;

4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth;

5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when he might reasonably have expected such person to use, consume, or be affected by the goods in this Commonwealth, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;

6. Having an interest in, using, or possessing real property in this Commonwealth;

7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;

8. Having (i) executed an agreement in this Commonwealth which obligates the person to pay spousal support or child support to a domiciliary of this Commonwealth, or to a person who has satisfied the residency requirements in suits for annulments or divorce for members of the armed forces pursuant to § 20-97 provided proof of service of process on a nonresident party is made by a law-enforcement officer or other person authorized to serve process in the jurisdiction where the nonresident party is located, (ii) been ordered to pay spousal support or child support pursuant to an order entered by any court of competent jurisdiction in this Commonwealth having in personam jurisdiction over such person, or (iii) shown by personal conduct in this Commonwealth, as alleged by affadavit, that the person conceived or fathered a child in this Commonwealth; or

9. Having maintained within this Commonwealth a matrimonial domicile at the time of separation of the parties upon which grounds for divorce or separate maintenance is based, or at the time a cause of action arose for divorce or separate maintenance or at the time of commencement of such suit, if the other party to the matrimonial relationship resides herein.

Jurisdiction in subdivision 9 of this subsection is valid only upon proof of service of process pursuant to § 8.01-296 on the nonresident party by a person authorized under the provisions of § 8.01-320. Jurisdiction under subdivision 8(iii) of this subsection is valid only upon proof of personal service on a nonresident pursuant to § 8.01-320.

B. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him; however, nothing contained in this chapter shall limit, restrict or otherwise affect the jurisdiction of any court of this Commonwealth over foreign corporations which are subject to service of process pursuant to the provisions of any other statute. (Code 1950, § 8-81.2; 1964, c. 331; 1977, c. 617; 1978, c. 132; 1981, c. 6; 1982, c. 313; 1983, c. 428; 1984, c. 609; 1986, c. 275; 1987, c. 594; 1988, cc. 866, 878; 1992, c. 571.)

§ 8.01-329. Service of process or notice; service on Secretary of Commonwealth. – A. When the exercise of personal jurisdiction is authorized by this chapter, service of process or notice may be made in the same manner as is provided for in Chapter 8 (§ 8.01-285 et seq.) of this title in any other case in which personal jurisdiction is exercised over such a party, or process or notice may be served on any agent of such person in the county or city in this Commonwealth in which that agent resides or on the Secretary of the Commonwealth of Virginia, hereinafter referred to in this section as the "Secretary," who, for this purpose, shall be deemed to be the statutory agent of such person.

B. When service is to be made on the Secretary, the party or his agent or attorney seeking service shall file an affidavit with the court, stating either (i) that the person to be served is a nonresident or (ii) that, after exercising due diligence, the party seeking service has been unable to locate the person to be served. In either case, such affidavit shall set forth the last known address of the person to be served.

When the person to be served is a resident, the signature of an attorney, party or agent of the person seeking service on such affidavit shall constitute a certificate by him that process has been delivered to the sheriff or to a disinterested person as permitted by § 8.01-293 for execution and, if the sheriff or disinterested person was unable to execute such service, that the person seeking service has made a bona fide attempt to determine the actual place of abode or location of the person to be served.

C. Service of such process or notice on the Secretary shall be made by the plaintiff's, his agent's or the sheriff's leaving a copy of the process or notice, together with a copy of the affidavit called for in subsection B hereof and the fee prescribed in § 14.1-103 in the office of the Secretary in the City of Richmond, Virginia. Service of process or notice on the Secretary may be made by mail if such service otherwise meets the requirements of this section. Such service shall be sufficient upon the person to be served, provided that notice of such service, a copy of the process or notice, and a copy of the affidavit are forthwith mailed, by the Secretary to the person or persons to be served at the last known post-office address of such person, and a certificate of compliance herewith by the Secretary or someone designated by him for that purpose and having knowledge of such compliance, shall be forthwith filed with the papers in the action. Service of process or notice on the Secretary shall be effective on the date the certificate of compliance is filed with the court in which the action is pending.

D. Service of process in actions brought on a warrant or motion for judgment pursuant to § 16.1-79 or § 16.1-81 shall be void and of no effect when such service of process is received by the Secretary within ten days of any return day set by the warrant. In such cases, the Secretary shall return the process or notice, the copy of the affidavit, and the prescribed fee to the plaintiff or his agent. A copy of the notice of the rejection shall be sent to the clerk of the court in which the action was filed.

E. The Secretary shall maintain a record of each notice of service sent to a person for a period of two years. The record maintained by the Secretary shall

include the name of the plaintiff or the person seeking service, the name of the person to be served, the date service was received by the Secretary, the date notice of service was forwarded to the person to be served, and the date the certificate of compliance was sent by the Secretary to the appropriate court. The Secretary shall not be required to maintain any other records pursuant to this section. (Code 1950, § 8-813; 1977, c. 617; 1979, c. 31; 1986, c. 388; 1987, cc. 449, 450, 459; 1990, c. 741.)

§ 8.01-428. Setting aside default judgments; clerical mistakes; independent actions to relieve party from judgment or proceedings; grounds and time limitations. – A. *Default Judgments and decrees pro confesso; summary procedure.* – Upon motion of the plaintiff or judgment debtor and after reasonable notice to the opposite party, his attorney of record or other agent, the court may set aside a judgment by default or a decree pro confesso upon the following grounds: (i) fraud on the court, (ii) a void judgment, (iii) on proof of an accord and satisfaction. Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree.

B. *Clerical mistakes.* – Clerical mistakes in all judgments or other parts of the record and errors therein arising from oversight or from an inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending such mistakes may be corrected with leave of the appellate court.

C. *Failure to notify party or counsel of final order.* – If counsel, or a party not represented by counsel, who is not in default in a circuit court is not notified by any means of the entry of a final order and the circuit court is satisfied that such lack of notice (i) did not result from a failure to exercise due diligence on the part of that party and (ii) deny that party an opportunity to file an appeal therefrom, the circuit court may, within sixty days of the entry of such order, grant the party leave to appeal. The computation of time for noting and perfecting an appeal

shall run from the entry of such order, and such order shall have no other effect.

D. *Other judgments or proceedings.* – This section does not limit the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceeding, or to grant relief to a defendant not served with process as provided in § 8.01-322, or to set aside a judgment or decree for fraud upon the court. (1977, c. 617; 1991, c. 39; 1993, c. 951.)

IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF VIRGINIA,
***ex rel.*, SECRETARY OF THE**
COMMONWEALTH,

Petitioner,

v.

GERALD P. MISERANDINO and
KAREN L. MISERANDINO,

Respondents.

AFFIDAVIT OF GEORGIA ANNE ROOT

The undersigned, GEORGIA ANNE ROOT, hereby declares under penalties of perjury, 28 U.S.C. § 1746, as follows:

1. I am confident to testify to the matters sworn to by me in this Affidavit. I swear and certify that the statements within this affidavit are true to the best of my knowledge and belief.

2. Currently, I hold the position of Deputy Secretary of the Commonwealth of Virginia. I have held this position since April of 1994.

3. In my capacity as Deputy Secretary of the Commonwealth of Virginia, I am familiar with the approximate number of requests for service of process on nonresidents which the Secretary of the Commonwealth processes per week and per year.

4. The Secretary of the Commonwealth processes approximately 975 requests for service of process on nonresidents per week and over 50,000 requests per year.

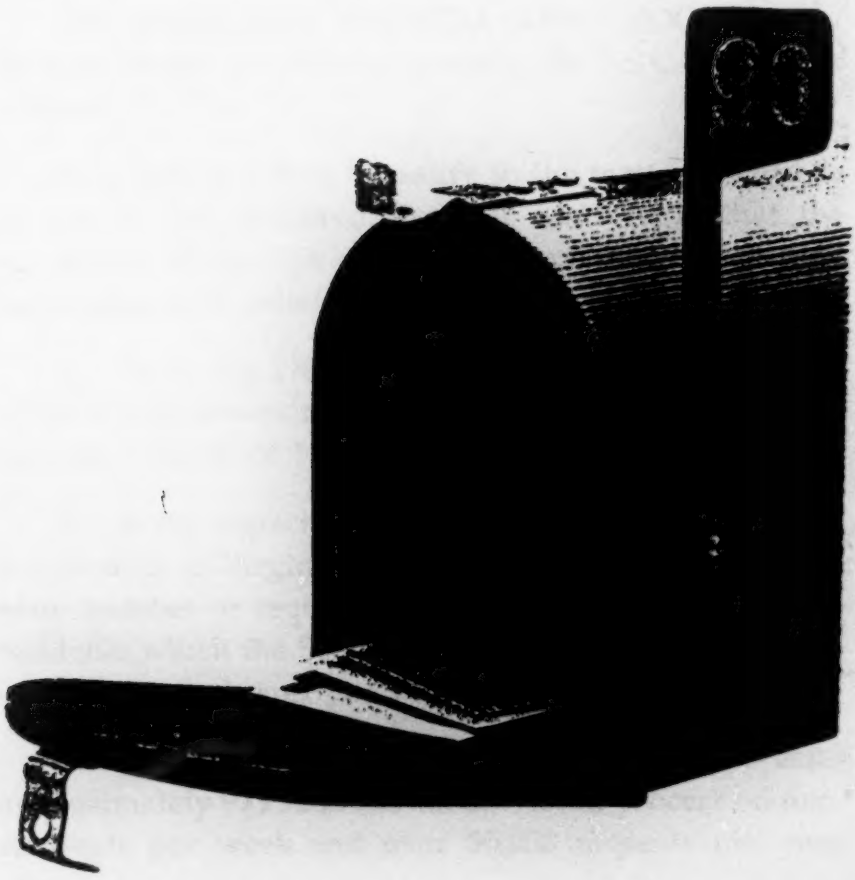
5. A requirement that each of these requests be forwarded by certified or registered mail to non-residents would substantially increase the workload, staffing needs, and costs of the Secretary of the Commonwealth.

Declared and signed under penalties of perjury, 28 U.S.C. § 1746, this 12 day of June, 1997.

/s/ Georgia Anne Root

(Logo) UNITED STATES
POSTAL SERVICE.

1996 Comprehensive Statement on Postal Operations



introduction

This is the twenty-first annual *Comprehensive Statement on Postal Operations* transmitted to the Congress in accordance with section 2401(e) of title 39, United States Code. This law requires the Postal Service to submit to its appropriations and oversight committees, in the House and Senate, an annual statement discussing in detail its current and planned operations, policies, financial expenditures, and obligations. This statement is organized in a format to comply with the literal requirements of the statute. Chapter 1 discusses the Postal Service's compliance with policy directives set forth in 39 U.S.C. 101. Chapters 2 and 3 cover postal operations in general and the current financial status of the postal system.

The information in the *Comprehensive Statement on Postal Operations* and in the *Annual Report of the United States Postal Service* is intended to assist the appropriations and oversight committees that have jurisdiction over the Postal Service with their annual oversight and budget review process. The Postal Service welcomes the opportunity to furnish any additional information that may be required by the Congress to carry out its oversight responsibilities.

Comprehensive Statement on Postal Operations

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Compliance with Statutory Policies

chapter one

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A. Fundamental Service to the People (39 U.S.C. 101 (a))

1. General

In 1996, considerable resources were devoted to Classification Reform.

Between March 4 and July 1, 1996, there was a massive effort to train both Postal Service employees and customers. Approximately 3,600 training sessions were conducted for Postal Service employees and 9,700 for customers. In addition, training sessions were held at the Anaheim, CA, and the Washington, DC, National Postal Forums. Also, brochures, posters, and other printed materials were distributed to Postal Service employees and customers during that period, disseminating a variety of technical information and helping to ensure a smooth implementation of Classification Reform. A speaker's bureau consisting of trained Postal Service employees was established to help spread the message of Classification Reform at postal customer council meetings and other mailers' events. A Classification Reform call center was established, with a toll-free telephone number, to answer customers' questions about Classification Reform.

Classification Reform standardizes the way bulk mailings are prepared, regardless of the class of mail or the rate claimed. In the months immediately after the July 1 implementation of Classification Reform I, customer-barcoded volume increased by over 30 percent compared with the previous year.

On March 13, 1996, the Postal Rate Commission recommended approval of the Postal Service's request to allow mailers to mail barcoded First-Class Mail and Priority Mail parcels at a reduced rate on an experimental basis. The test is under way at three locations.

In January, Marketing Systems introduced *Mailroom Companion,* a monthly newsletter that responds to the increasing need to provide field personnel and business mailers with a comprehensive, timely publication that addresses their technical questions and concerns and offers them the latest Postal Service information essential to effective mailings. The demand for this publication has steadily increased, with an average of 5,000 new subscribers each month. By the end of Fiscal Year 1996, *Mailroom Companion* had 117,000 subscribers.

During the year more types of polywrap materials were approved for mailing matter at automation postage rates. By the end of Fiscal Year 1996, over 78 mailers – representing over 2,000 publications – had been certified to claim automation rates for flats. The goal is to enter 50 to 60 percent of all polywrapped flats into the automation mailstream.

On July 1, 1996, we initiated a test to allow mailers to claim the automation rate for flat-size pieces measuring at least 5-3/8 inches long and less than 12 inches high. Recent review of postal mail-processing operations demonstrated that some of these smaller digest-size pieces can be processed on postal flat-sorting machines. This represents a savings in processing time and costs to the Postal Service and increases the volume of barcoded mail

in the automated mailstream. The test will run until June 1997.

Through the efforts of its conscientious employees, the Postal Service achieved approximately $70 million in revenue retention by ensuring that the correct postage was paid for the matter mailed.

In late 1996, automated barcode evaluators were deployed to selected sites; these will be used to evaluate the quality of barcodes on letter-size pieces mailed at automation rates.

2. Quality

CustomerPerfect!$_{SM}$ continued to provide the management system framework for significant change and progress in 1996. Senior management set targets in three goal areas: Customer, Business, and Employee. This approach is recognized in the business community as a "balanced scorecard." The organization responded with another service performance record (External First-Class of 91 percent, overnight, for the fourth quarter) and another strong financial performance (exceeding $1.5 billion in net income). These results exceeded the corporate targets. Performance in the employee goal area failed to meet the target in a few areas, most notably safety.

The construction and operation of the entire *CustomerPerfect!* system remains grounded in the Malcolm Baldrige Award Criteria model. The Deputy Postmaster General, Mike Coughlin, manages the Implementation Team for *CustomerPerfect!* Vice presidents who "own" the

individual elements of the system serve as team members. This team meets approximately twice every month to review progress and plan next steps. The plans themselves, along with area plans for contributing to *CustomerPerfect!*, are displayed in the executive conference room at headquarters so that the Implementation Team and the Management Committee can readily review progress. The Management Committee will soon begin formal business reviews, based on a process for review developed through *CustomerPerfect!*

The accomplishments of *CustomerPerfect!* are sometimes difficult to see directly. They often reside in the integration and alignment of activities that are occurring within or across functions. For example, the measurement of customer satisfaction in the Postal Service has undergone some major changes during this year to make the measures more responsive to Postal Service managers' needs. They now provide more timely information, along with "diagnostic" survey items that reflect things managers can take action on. At least in part, these changes were the work of the *CustomerPerfect!* team on customer satisfaction, which designed changes to the measurement systems in accordance with the criteria from the Baldrige Award.

Another accomplishment that can be traced to its *CustomerPerfect!* origins is the development of new revenue indicators that drive the Economic Value Added (EVA) measure. Working on indicators for the Postal Service, the *CustomerPerfect!* team sponsored an activity to improve over tracking of revenue. As a result of this work, the Postal Service will now have better understanding of who our customers are, where the mailing

decisions of our customers are being made, and how to direct our sales force toward both serving and selling to those customers. These revenue indicators provide a powerful new tool for our managers and sales force to affect the revenue side of the EVA equation.

One of the most critical transformations the Postal Service must undergo to become more businesslike is to improve its focus on the customer. The new customer satisfaction measurement tools and the identification of customers (from the revenue indicators project) are two critical pieces of the puzzle. A third critical piece is a much more robust customer needs process. The Postal Service has been doing market research in a number of ways, and various departments have collected information on our customers. But this information has not been aggregated and summarized in ways that are useful for decision making by management. As a result of *Customer-Perfect!* there is much more emphasis on the aggregation of these data and the alignment of our data collection systems. This information is now directly fed into the strategic planning process and used to identify long-term and short-term goals through the management cycle (Establish, Deploy, Implement, Review).

During 1996, the management cycle itself continued to mature, as follows:

a. Establish. Leadership established goals, subgoals, indicators, and targets for Fiscal Year 1997. This process involves considering input from three areas that we call "voices" – the Voice of the Customer, the Voice of the Employee, and the Voice of the Business. Information from each of the voices is collected and analyzed, then

presented to leadership for final decisions on the specific achievements needed for the next fiscal year. Leadership also sets the performance targets to be met.

These goals and targets are set well ahead of the beginning of the fiscal year, so that all plans, activities, and budgets can be aligned accordingly by the beginning of the year. We are not yet as good at this as we need to be. An officer-level team has been assigned to review the Establish process. They have made a number of recommendations to the Management Committee, and they have improved this process for Fiscal Year 1998 planning, now under way.

b. Deploy. For the first time, we used a new process to deploy the Fiscal Year 1997 goals, subgoals, indicators, and targets. The process was guided by a National Deployment Team headed by an area vice president. The team reviewed over 600 national programs, evaluated their expected contribution to corporate goals, and made recommendations to senior management. The result was that over half of the national programs were "plowed," meaning that they were not recommended for funding. Aligning the national programs to the corporate goals is a significant step forward. Future efforts in the Deploy process will improve the process for setting field contributions to the corporate goals.

c. Implement. Process management, a disciplined, data-based approach to process improvement was introduced at demonstration sties in each of the ten areas, following pilot implementation in Washington, DC, and Nashville, TN, in Fiscal Year 1995. The ten demonstration sites were as follows:

Area	Demonstration Site
Allegheny	Harrisburg
Great Lakes	Indianapolis
Mid-Atlantic	Southern Maryland
Midwest	Omaha
New York Metro	Manhattan
Northeast	Hartford
Pacific	Sacramento
Southeast	Memphis
Southwest	New Orleans
Western	Seattle

The *CustomerPerfect!* methodology for implementing process management is based on three essential components: leadership involvement, process documentation and indicators, and problem solving. In the demonstration sites, local leadership directed the work of process management teams to document (using flowcharts) how work actually gets done in the core processes. Using this understanding of their processes, leaders in the demonstration sites installed process and results indicators, which they used to assess results and determine where the processes most needed attention. After specific needs were identified at the local sites, teams were created to solve the problems. They were given training in a standard methodology for solving problems and in documenting their progress and results.

Teams from the demonstration sites have successfully demonstrated the effectiveness of this approach. Seasoned postal managers have endorsed process management as an effective, data-based way to improve core process capability. Each area is developing aggressive expansion plans for Fiscal Year 1997.

Having successfully introduced process management into the core processes of the Postal Service, senior management has initiated efforts to introduce the same approach to our enabling processes. Enabling processes are defined as the systematic actions and operations that support the core processes in the delivery of products and services, or that support the Postal Service in meeting the requirements of our customers and other stakeholders. In June, senior management designated team leaders, a vice president from headquarters and an area vice president, to lead the effort to begin process management in the enabling processes. This team has made its final recommendations. These include a list of key processes in which to begin, plans for implementing the enabling processes, staffing and support requirements, etc.

d. Review. This step in the management cycle provides the feedback management needs to assess progress toward corporate goals and to make necessary adjustments. In addition, in a mature form, it becomes the vehicle for management to continuously improve the system. One of the CustomerPerfect! teams has developed a structured methodology for carrying out constructive reviews. Formal training in this methodology was completed and piloted in the area demonstration sites. This sets the stage for the formal review process to be implemented organization-wide, starting with the Management Committee in November 1996.

The Postal Service made considerable progress in 1996 toward its *CustomerPerfect!* objectives. Management has identified a number of areas requiring further improvement in Fiscal Year 1997. These include strategic

planning and product development processes, indicators with which to manage the business, incorporating process management into the selling/marketing core process, and defining our strategic human resource issues.

3. Board of Governors

As the governing body of the United States Postal Service, the eleven-member Board of Governors' responsibilities are comparable to those of a board of directors of a publicly owned corporation. The Board comprises nine "Governors" who are appointed by the President of the United States, with the advice and consent of the Senate, the Postmaster General, and the Deputy Postmaster General. Governors' appointments are for nine-year terms or the remainder of an unexpired term that may be vacated by the death or resignation of a sitting Governor. The terms are staggered so that one Governor's term expires every December 8; however, a Governor whose term has expired may continue to sit on the Board with full authority until a successor has been appointed, for a period not to exceed one year. The Governors appoint the Postmaster General, who serves at their pleasure without a specific term of office. The Governors, together with the Postmaster General, appoint the Deputy Postmaster General. (39 U.S.C. 202)

The Governors represent the public generally, and no more than five members may be members of the same political party. The Governors' annual salary was increased, by legislation on September 30, 1996, from $10,000 to $30,000. They also receive $300 per meeting day (for not more than 42 days each year) and travel

expenses. The Board meets monthly; at the January meeting, the "annual meeting," the Chairman is elected by the Governors from among all members of the Board, and the Vice Chairman is elected by the full Board. In 1996, the January meeting was canceled due to inclement weather, and the Chairman was elected at the February meeting and the Vice Chairman at the March meeting.

The Board establishes policies, basic objectives, and long-range goals for the Postal Service in accordance with Title 39 of the United States Code. Except for those powers specifically vested in the Governors, the Board may delegate the authority vested in it by statute to the Postmaster General under such terms, conditions, and limitations, including the power or redelegation, as it deems desirable. (39 U.S.C. 402) The Governors are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services. (39 U.S.C. 3621) A specific power reserved by statute for the Governors alone is to approve, allow under protest, reject, or, by unanimous written decision, modify recommended decisions of the Postal Rate Commission on postal rate and mail classification changes. (39 U.S.C. 3625)

During Fiscal Year 1996, with the exception of the January meeting, the Board held regular monthly meetings and two special meetings for a total of 28 days. Seven of the regular monthly meetings were held in Washington, DC, and four were held in cities across the country to give the Board members an opportunity to meet mailers and hear their concerns and, where possible, visit postal operations. Additionally, the Board held

two special meetings to do strategic planning and consider personnel matters.

The Board has four standing committees: Audit, Capital Projects, Compensation, and Strategic Planning, each having a number of meetings during the year to consider matters within their area of responsibility. An ad hoc committee of the Governors was also appointed immediately following the enactment of the legislation on September 30, 1996, establishing an independent Inspector General for the Postal Service.

In October 1995, the Board approved the EVA performance award program for 1996. They also approved a five-year vehicle plan and a five-year capital investment plan for Fiscal Years 1996 to 2000.

In November, the external audit firm of Ernst and Young LLP was selected as the Board's auditors to provide outside audit services for a five-year period with additional option years.

In December, the Board approved Resolution No. 95-14, establishing a Capital Projects Committee of the Board.

In March 1996, the Governors adopted in part and rejected in part the Postal Rate Commission's Recommendation on Classification Reform in Docket No. MC95-1, The Board approved Resolution No. 96-2 on the effective date for the rate changes resulting from Classification Reform. The Board also approved proposed process changes to international rate setting.

In April, the Governors approved the Postal Rate Commission's recommended decision in Docket No.

MC96-1, Experimental First-Class and Priority Mail Small Parcel Automation rate category. The Governors also approved a filing on Nonprofit Classification Reform.

In June, the Governors approved a filing with the Postal Rate Commission on Special Services Classification Reform.

In August, the Governors approved the Postal Rate Commission's recommended decision in Docket No. MC96-2, Nonprofit Classification Reform.

In September, the Board approved the Fiscal Year 1997 Operating Budget.

During the year the Board considered and approved a number of capital investment proposals costing $10 million or more. Funding was approved for additional Remote Barcode Systems (RBCSs); low-cost optical character readers; the multiline optical character reader codirectory; delivery and collection and carrier route vehicles; phase I-associate office infrastructure and point-of-service equipment; phase I of the robotics tray-handling system; and a number of new major postal facilities.

There was one change in membership of the Governors during Fiscal Year 1996. On October 2, 1995, Governor Ned R. McWherter was appointed to the one remaining vacancy. His term expires in December 2002.

4. Strategic Planning

In June 1996, strategic planning was elevated to a corporate-level function, headed by a vice president who reports directly to the Deputy Postmaster General.

A key element of the strategic planning initiative was the creation of a Strategic Planning Council, overseen by the Deputy Postmaster General and chaired by the Vice President of Strategic Planning. The Strategic Planning Council, composed of Postal Service vice presidents from various core processes and enabling functions, will provide advice to the Management Committee to assist in shaping the strategic direction of the Postal Service. Key concerns to be addressed by the Strategic Planning Council will be integrating strategies from the operations and marketing sides of the business; integrating the Voice of the Customer, the Voice of the Business, and the Voice of the Employee; and providing advice to the Management Committee to accelerate the achievement of Postal Service goals.

The strategic planning process will be integrated down into the organization to include management and employees of the Postal Service in formulating plans and to accelerate the process of creating a competitive enterprise for the 21st century.

The *CustomerPerfect!* process comprises four phases: Establish, Deploy, Implement, and Review. The Establish phase is the first part of planning for the future. Strategic planning plays a key role in supporting the Management Committee as it makes decisions to establish goals and to deploy resources.

Strategic planning is a key part of *CustomerPerfect!*, the basic system through which the U.S. Postal Service manages itself and seeks to transform business as usual. There is a clear need for strategy to establish priorities among investments in business initiatives, programs to

reduce costs, and programs to improve customer service. Strategic planning is also the process through which the voices that guide the company are integrated.

The strategic planning process establishes a method for top management to obtain input from the three voices by developing an environmental analysis and a systematic analysis of strengths, problems, opportunities, and threats. The Management Committee, guided by the advice of the Strategic Planning Council, adopts a strategic framework for establishing goals and operating targets. By setting priorities and deploying resources accordingly, the Management Committee implements action plans for accomplishing its strategic objectives. Similarly, the articulation of strategic plans provides a systematic process for reviewing the achievement of goals for which management is accountable.

In this sense, the strategic planning process is a means for integrating the key functions in the *Customer-Perfect!* management system.

B. Service to Small or Rural Communities (39 U.S.C. 101 (b))

In enacting the Postal Reorganization Act, it was the specific intent of Congress to ensure effective postal service to residents of both urban and rural communities. In providing the nation's mail service, the Postal Service has established a nationwide network of postal facilities, centralized delivery units, and rural and highway contract delivery routes.

At the end of Fiscal Year 1996, 28,189 post offices, 5,521 classified stations and branches, 1,605 community post offices, and 2,897 contract stations and branches were in operation. In addition, 57,654 rural delivery routes served 25.5 million mail receptacles. During 1996, 3,212 new routes were added to the rural delivery network.

A change in community postal needs or the loss of suitable facilities may lead to the closing of a post office or its consolidation into a station, branch, or contract post office. Proposals to discontinue or consolidate a post office are carefully evaluated on a case-by-case basis consistent with the statutory criteria found in 39 U.S.C. 404(b). Formal administrative procedures have been established to review discontinuance proposals and to ensure community input and discussion. A discontinuance proposal may be appealed to the independent Postal Rate Commission. When an independent post office is closed or consolidated, customers are provided comparable services.

During Fiscal Year 1996, the Postal Service closed or consolidated 161 post offices, 17 community post offices, and 2 classified branches. There were twenty-two appeals to the Postal Rate Commission. Fourteen decisions to close or consolidate a facility were affirmed, one was dismissed on procedural grounds, and three were remanded to the Postal Service for further consideration. In two of the appeals, the Postal Service withdrew its determination to close or consolidate. Two appeals are still pending before the Postal Rate Commission.

C. Employee Compensation and Career Advancement (39 U.S.C. 101 (c))

1. Collective Bargaining

The 1994 USPS-National Postal Mail Handler Union (NPMHU) collective bargaining agreement expired in November 1994, with the parties failing to reach agreement on a successor national agreement. Discussions between the parties to resolve outstanding issues were unsuccessful and the parties agreed to proceed directly to interest arbitration, consistent with the dispute resolution procedure provided for in the Postal Reorganization Act. After a full evidentiary hearing, a three-member Arbitration Board chaired by neutral member M. David Vaughn issued an award setting the terms of a new USPS-NPMHU National Agreement on April 24, 1996. The four-year agreement covers approximately 58,000 employees and expires on November 20, 1998. The award provides for a freeze in basic wages for the first year, 1.2 percent general increases in the second and fourth years, lump-sum payments of 2.78 percent of the employee's base annual salary in the first year and $400 in the third year, and cost-of-living allowances (COLAs) beginning in the second year of the contract and continuing through its term. COLAs earned during the term of the prior agreement were rolled into basic pay in May 1996, and all COLA payments during the new agreement will be rolled in immediately. Night shift differential rates were converted to fixed amounts and frozen until November 22, 1997, when the fixed amounts will be reduced by 7.5 percent. A one-time lump-sum cash payment was to be made to NPMHU on behalf of employees who worked

night shift differential hours during Fiscal Year 1995. NPMHU's request for parity wage adjustments was rejected by the Board. The economic terms of the Vaughn Award essentially mirror the Stark and Clarke Interest Award issued in 1995 covering the National Association of Letter Carriers (NALC) and the American Postal Workers Union (APWU), respectively.

During the course of the 1995 USPS-APWU interest arbitration proceedings, the parties agreed to defer the resolution of certain matters concerning the noncareer transitional employee (TE) category to a subsequent supplemental arbitration at a later date. On June 7, 1996, a three-member Arbitration Board chaired by neutral member Jack Clarke issued an award applicable to approximately 34,000 TEs represented by the APWU, most employed at Remote Encoding Centers (RECs). The award covers the four-year period since the expiration of the 1994 National Agreement and runs through November 20, 1998. The award freezes TE wage levels for four years and reduces wage levels for new TEs hired on or after July 6, 1996. Night shift differential rates were converted to fixed amounts and frozen until November 22, 1997, when the fixed amount will be reduced by 7.5 percent. TEs who have completed one 360-day appointment and are reappointed may elect health insurance coverage under the Federal Employees Health Benefits Program (FEHB). The TEs must pay 100 percent of the health benefit premium cost; at their option, the premium may be paid out of pretax earnings. The decision also provides for two-hour guaranteed reporting pay; higher-level pay for TEs working higher-level positions; and

rights to career employment opportunities that will permit TEs to take in-service exams for career postal jobs.

The 1994 USPS-Fraternal Order of Police (FOP), National Labor Council, USPS No. 2, collective bargaining agreement contains a wage reopener provision. This provision allowed the FOP to request to reopen negotiations over years two and three of the economic package contained in its agreement, if it felt the economic package in any one of the three USPS National Agreements with the APWU, NALC, or NPMHU was more favorable than that contained in its own agreement with the USPS. The FOP chose not to exercise its reopener and instead retained its formula for calculating wage improvements for postal police officers (Employment Cost Index minus 1 percent). In a voluntarily negotiated agreement in July 1996, the USPS and the FOP agreed to an early extension of the existing agreement for two additional years until April 1999, retaining the contractual wage formula. The agreement was overwhelmingly ratified by the FOP membership. The parties are working on improving the labor-management relationship during the remaining period of their agreement.

In September 1996 a secret ballot representation election was held by the National Labor Relations Board at the Mail Equipment Shops in Washington, DC. The election was to determine whether or not eight tool-and-die employees in the machine shop wished to be represented for purposes of collective bargaining by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM). Employees voted for IAM representation by a one-vote majority. Negotiations are in progress.

2. Personnel

a. Postal Career Executive Service. There were 928 individuals in the ranks of the Postal Career Executive Service (PCES) at the close of Fiscal Year 1996. Of this total, 665 individuals held PCES I positions and the remainder (other than officers) served in Executive and Administrative (EAS) positions. There were 37 PCES II officers in the Postal Service at the end of the fiscal year. Minorities and women held 205 of the PCES I positions and 8 of the PCES II officer positions. These figures represent 31 percent of the PCES I executives and 22 percent of the PCES II officers. Of the officers, there were 4 white females, 3 black males, and 1 Hispanic male. In the PCES I ranks, there were 2 Asian females, 31 black females, 3 Hispanic females, 64 white females, 1 Native American male, 7 Asian males, 65 black males, and 32 Hispanic males.

b. Consultation with Management Associations. In accordance with Title 39, United States Code, Section 1004, regular consultative sessions were held with the National Association of Postal Supervisors (NAPS), National Association of Postmasters of the United States, and the National League of Postmasters of the United States. The sessions were concerned with such matters as performance evaluations, placement procedures, staffing, and training.

For the first time in the history of the pay consultation process, the Postal Service engaged in separate consultations with its supervisory and postmaster representatives. This year's pay consultations were the

most protracted, beginning in November 1995 and culminating nearly one year later. The discussions leading to the EAS compensation package were the most deliberate and comprehensive since Postal Reorganization.

While the supervisory association (NAPS) endorsed the new pay package, the two postmaster associations have rejected the package on the basis that it fails to treat all postmasters alike.

The Fiscal Year 1995-1998 compensation package for EAS employees was designed utilizing the principle of moderate restraint to achieve performance- and market-based objectives. The pay practices for EAS employees are competitive and more closely aligned with private sector practices and the *CustomerPerfect!* goals of the Postal Service. The compensation package introduces a performance-based pay system that eliminates outmoded pay practices (such as automatic general increases and COLAs), modifies the eligibility requirements for premium pay (such as overtime and higher level), and better aligns the postmasters' leave criteria with that of all Postal Service employee organizations. The EAS merit program is based on each individual's performance. The merit increase is provided within a salary range that is constructed around a market-based midpoint.

c. Equal Employment Opportunity

(1) Affirmative Action. The Affirmative Action unit has nationwide responsibility for providing program guidance on Postal Service affirmative action activities. During Fiscal Year 1996, the staff focused its efforts on

the Voice of the Employee issues identified in the *CustomerPerfect!* process. Specifically, Affirmative Action targeted the subgoal of enhancing the workplace environment with the express purpose of providing an environment free from sexual harassment and discrimination. In this regard, the Affirmative Action staff helped postal managers complete multiyear affirmative employment plans and accomplishment reports that addressed the prevention of sexual harassment and discrimination in the workplace. These plans and accomplishment reports are submitted annually to the Equal Employment Opportunity Commission. In addition, Affirmative Action implemented a new tracking system to monitor the hiring and internal movement of employees throughout the organization for affirmative action compliance. This unit also developed and distributed Publication 18, "Manager's Guide to Understanding Affirmative Action," to all postal managers.

The Postal Service reactivated the Hispanic Program with the approval of positions for a national program specialist and thirty field program specialists. This program is an integral part of the Postal Service's Diversity Development, Affirmative Action, and Equal Employment Opportunity policies and planning programs. The purpose of this program is to ensure that Hispanics are provided equal opportunity to compete in every aspect of employment.

The Postal Service also reactivated the Women's Program to continue to improve the status of women in the Postal Service through recruitment, hiring, development, and promotion. This program is also an integral part of the Postal Service's Diversity Development, Affirmative

Action, and Equal Employment Opportunity policies and planning programs. Its primary focus is to ensure the equality of opportunities for all women throughout the Postal Service in order to (a) increase the proportion of women among new hires; (b) increase the proportion of women at all levels in nontraditional occupations (e.g., maintenance, mail handler, and carrier crafts); and (c) improve the representation of women in postal management, especially in senior management positions. Future initiatives include selecting a national program specialist and field program specialist to implement and monitor the program.

Some of the ongoing affirmative action activities include coordinating special-emphasis observances, providing assistance on diversity-related issues, and responding to requests for workforce profiles from internal and external customers. Field Diversity Development specialists conducted training sessions in a variety of areas including deaf awareness, cultural differences, managing diversity, sexual harassment prevention, and preparing for postal examinations. Headquarters and field specialists also coordinated career awareness conferences to provide employees with information on career development and personal growth.

Affirmative Action has updated and distributed the management instruction for career awareness conferences; finalized the revision of Publication 294, "Career Employee Retention Guide" (formerly called "Guide to Retaining Hispanic Employees"); and is revising Handbook P-5, "Conducting On-Site Equal Employment Opportunity Evaluations."

(2) Equal Employment Opportunity (EEO) Complaints. The number of precomplaint counselings and formal complaints in the Postal Service declined in Fiscal Year 1996. There were 26,556 precomplaint counselings conducted in Fiscal Year 1996, compared with 30,001 the previous year, a reduction of 11 percent. There were 13,252 formal complaints filed, compared with 13,322 the previous year, a reduction of 0.5 percent. The Postal Service continued to focus on the early resolution of disputes in this process, as the 51 percent resolution rate in Fiscal Year 1996 demonstrates.

To further improve the resolution of disputes at the earliest opportunity, the Postal Service continued to build on its efforts to expand Alternate Dispute Resolution (ADR). Additional pilot sites were identified, and extensive training in ADR program development and implementation was conducted. Part of this extensive training included intensive sessions on mediation, which is the primary dispute resolution technique adopted for this program. Systems were also introduced to carefully monitor and evaluate success in this program.

Another important initiative for Fiscal Year 1996 was the establishment of a Business Process Reengineering (BPR) team to identify current practices in EEO complaint processing and to recommend improvements to the system used by the Postal Service. This was an extensive study, with recommendations touching on work flow, staffing and structure, and information systems. This study will be used to develop enhancements to the process so that the volume of cases can be handled efficiently and consistently.

d. Employment of Individuals with Disabilities. In most cases, the Postal Service uses regular competitive procedures in selecting individuals with disabilities for employment. Nonetheless, individuals with severe disabilities receive noncompetitive employment consideration through referrals from individual State Departments of Vocational Rehabilitation or the Department of Veterans Affairs. In Fiscal Year 1996, the Postal Service's career workforce included 43,146 employees with reported disabilities and 7,707 employees with targeted disabilities.

Each year, the Postal Service submits an Affirmative Employment Plan and an Accomplishment Report for Individuals with Disabilities to the Equal Employment Opportunity Commission. The affirmative employment plan is disseminated to Postal Service field installations, and each installation head is responsible for implementing the plan.

e. Veterans' Employment. The Postal Service is one of the largest employers of veterans and disabled veterans in the nation. At the end of Fiscal Year 1996, the Postal Service employed 256,884 veterans, including 81,238 veterans with disabilities. Of that number, 18,873 have disabilities of 30 percent or more. The Postal Service prepares an annual Accomplishment Report and Plan Certification for Disabled Veterans Affirmative Action Program. The plan is submitted to the Office of Personnel Management.

f. Employee Assistance Program. Employee and Organizational Assistance Services oversees the

Employee Assistance Program (EAP), as well as workplace violence prevention and child dependent care initiatives. The Postal Service EAP is one of the most effective in any sector, public or private. The EAP includes free, voluntary, confidential, in-person counseling services to employees and family members by master's- and doctorate-level counselors housed in or near local USPS facilities. Counselors assist employees and family members with a variety of problems that affect their lives, including financial, legal, chemical dependency, emotional, and family problems.

Counselors are available 24 hours a day, seven days a week, located conveniently within 50 miles or a one-hour drive from even a remote work site. In addition to the full-time counseling staff of approximately 250, the EAP has a network of more than 10,000 professional affiliate counselors nationwide. Through this network of full-time and affiliate counselors, by the end of Fiscal Year 1996, 123,804 employees and family members had contacted the EAP for assistance since the new, expanded EAP began in March 1993. In Fiscal Year 1996 alone, 32,393 employees and their family members received counseling from the EAP. This is an increase of 9 percent over the prior year, and a 343-percent increase over the last year of data under the "old" EAP, which focused on substance abuse problems. In particular, family members and supervisors increased their use of the EAP (by 30 percent and 96 percent, respectively), indicating an enhanced trust in the professionalism of the services. Fully 43 percent of the USPS employees seeking counseling reported that their problems negatively affected their job performance. Ninety-four percent of those responding to a satisfaction

survey stated that the counseling helped resolve their problems.

The EAP also provides consultation to managers and supervisors regarding not only individual workers, but also the work setting within which they function. EAP coordinators and counselors provided approximately 12,000 consultations to management about such topics as supervision strategies and management skills; they also worked with union members more than 1,200 times to help resolve issues and prevent workplace disruption. The EAP intervenes when appropriate through preventive efforts, such as educational seminars on communication and stress management; ameliorative efforts, such as actual conflict resolution sessions; and restorative actions, such as debriefings after a critical incident (e.g., suicide, domestic violence at work, armed robbery, accidental death).

Violence prevention efforts center on developing awareness and skills in managers, supervisors, and union officials to reduce the risk of violence; creating a model Crisis Management Plan for use across the nation; and instituting a Threat Assessment Team guide for local leadership to use in reacting to potentially violent situations. Largely through the efforts of the EAP coordinators, Employee and Organizational Assistance Services conducted 2,773 eight-hour training classes in the Workplace Violence Awareness Program for over 61,000 postmasters, managers, supervisors, and local union officials. This surpassed Postmaster General Runyon's commitment in April 1995 to train 40,000 employees. EAP coordinators and counselors are typically an initial contact when a situation is threatening in nature. In Fiscal Year

1996, they responded to approximately 800 critical incidents and provided assistance to more than 7,570 employees after these incidents.

The child dependent care initiatives focus on evaluating several pilot projects across the United States.

g. Injury Compensation. In Fiscal Year 1996, the Postal Service held the growth of workers' compensation containment to 3.0 percent over the previous year. This rate continued the substantial improvement over the five-year average annual increase of 5.9 percent. Total paid compensation claims increased by 526 (2.0 percent), and total medical claims increased by 3,469 (3.2 percent) over the prior year. New compensation claims increased by 6.2 percent in Fiscal Year 1996 compared with the previous year's totals; new medical claims increased by 5.9 percent. There were 1,885 new claims in Fiscal Year 1996, compared with 1,774 new compensation claims in 1995; new medical claims totaled 41,909 during Fiscal Year 1996, compared with 39,561 in 1995. Workers' compensation costs are listed in chapter 3.

During Fiscal Year 1996, the Postal Service cost control strategy was again directed through the efforts of the Workers' Compensation Task Force. The task force is responsible for identifying ways to reduce injury compensation costs and for assisting in the rehabilitation and return to work of injured employees. Since its inception, the task force has realized almost $84 million of annual savings associated with the return to work of injured employees, either through the termination or reduction of Office of Workers' Compensation Programs (OWCP) compensation payments.

Since Fiscal Year 1994, the Western Area has reviewed medical charges arising out of injury compensation claims. A private contractor conducted comprehensive reviews of large workers' compensation bills for inpatient hospital services. Through this process, 1,861 hospital refunds were received, totaling more than $3.9 million.

The Postal Inspection Service continued its efforts in Fiscal Year 1996 to investigate fraud, waste, and abuse associated with employees' injury compensation claims submitted to the Postal Service. Postal inspectors identified 334 individuals suspected of workers' compensation violations, and criminal investigations led to 52 arrests and 40 convictions. Specific abuses uncovered by postal inspectors include fraudulent claims for Federal Employees Compensation Act (FECA) benefits, forgery and falsification of documents pertaining to outside income earned by FECA beneficiaries, and conspiracy and fraud by treating physicians and other medical providers. As a result of their efforts, postal inspectors were responsible for long-term cost avoidance of $66.8 million in the workers' compensation program.

h. National Medical Health Program. During 1996, a special program was implemented, focusing on healthy living both in and outside the work environment. Awareness programs on AIDS/HIV, working with AIDS, and breast cancer were presented throughout the nation. District health professionals continue to be proactive in health education, with a yearly health fair and brown-bag seminars. In support of *CustomerPerfect!*, a focus team recommended three core process changes to ensure better quality in hiring, management of contracts, and case

management of nonoccupational and occupational illnesses and injuries. Three focus teams will be developing the process, and pilot initiatives will be presented for approval and implementation.

Project PR 1000 encompasses a team effort to facilitate the return of injured employees who have been receiving OWCP benefits to the workplace. The goal is to achieve a smooth transition for the employee returning to work. The team is composed of injury compensation staff, medical staff, and the employee's supervisor. Through this team effort, the employee's and supervisor's concerns are addressed, and solutions are provided. Successful return-to-work placements could reduce our expenses by at least $250 million.

i. **Succession Planning.** The Postal Service introduced a corporate succession planning process in Fiscal Year 1995. Succession planning is the deliberate and systematic effort by the Postal Service to ensure leadership continuity and to build talent from within. The objectives are to identify people who can move into executive positions, develop people for corporate needs, and foster diversity among the leadership ranks. People are identified as potential successors based on their leadership skills, functional and general management expertise, and track record. After completing the second full year of succession planning, 69 percent of executive vacancies are filled by successors (EAS and PCES), 24 percent by the assignment of current executives, and 7 percent by other actions (EAS promotion for newly created positions; outside hires; positions for which there were no executive pools; etc.)

j. Combined Federal Campaign. Each fall the U.S. Postal Service joins other federal agencies in the Combined Federal Campaign drive. Our nationwide Campaign goal for past year was $28,120,000. We achieved 102 percent of that, contributing $28,515,000. Ninety-three percent of our contributions were through payroll deductions, with 37 percent participation. The average gift was $138.30. This drive benefits local, national, and international voluntary organizations.

3. Compensation and Benefits

a. Pay Comparability

(1) Bargaining Unit Employees' Pay and Benefits. The Postal Service continues to apply the principle of moderate restraint, set forth in past interest arbitration awards, to attempt to achieve compensation rates comparable with private industry. During Fiscal Year 1996, the average salary, benefits, and premium pay for career bargaining unit employees (excluding corporate-wide expenses) was $44,613 per work year. This average is a 0.9-percent decrease from Fiscal Year 1995 figures.

(2) Nonbargaining Unit Employees' Pay and Benefits. Pay for supervisors, postmasters, and nonbargaining unit staff employees generally meets or exceeds private sector levels. It also provides an adequate and reasonable differential between first-line supervisors and bargaining unit clerks and carriers.

Substantial changes were made in the nonbargaining unit pay package in 1996, after consultations with the

management associations. While there are a number of changes, the key elements to this pay package are the migration to a more market-based pay structure and pay practices that link all future pay adjustments and bonuses to performance (no automatic increases). The introduction of the EVA variable pay program to EAS employees exempt from the Fair Labor Standards Act aligns their pay practices with PCES executives and the corporate success measures as established under the *CustomerPerfect!* process. This pay package is in effect through November 1998 and provides management with the framework to drive the necessary behavioral changes to make the Postal Service competitive in the marketplace.

(3) Executive Pay and Benefits. Due to the limit imposed on Executive Schedule I salaries by the Postal Reorganization Act, pay and benefits for Postal Service officers and some key executives fail to meet private sector comparability standards. During Fiscal Year 1996, the average salary for Postal Service officers was $133,723. The average executive salary was $92,014.

The Postal Service continued to provide a focus on corporate objectives through the Fiscal Year 1996 EVA Variable Pay Program. This program recognizes the significant role that postal executives and other exempt employees played in achieving another year of exceptional on-time service and financial performance. The new EVA Variable Pay Program provided a considerably greater potential award payout for achieving breakthrough financial performance. Furthermore, by using the same performance measures for officers, executives, and exempt employees, participants are common stakeholders

in the success of the Postal Service in achieving its *CustomerPerfect!* goals. Finally, to help focus on continuous improvement and long-term results, a new concept of a Reserve Account was introduced. In Fiscal Year 1996, award payouts averaged $3,900 for employees who have been exempt all along, $12,500 for executives, and $1,600 for employees who recently converted from nonexempt to exempt. No employee was paid salary and bonus of more than $148,400. While the program was designed to recognize team performance, provisions were made to exclude individual employees who did not contribute to the performance of the organization.

b. Leave Programs. Postal Service employees are provided both sick and annual leave at the same rate as other federal sector employees. However, postal employees have a higher annual leave carryover limit than their federal sector counterparts. Postal employees used an average of 9.1 days of sick leave per employee during Fiscal Year 1996. Annual leave may be donated to other career postal employees who have exhausted their own leave and have a serious health problem. Under the Family and Medical Leave Act, eligible employees may take up to 12 weeks of annual leave, sick leave, or leave without pay for covered conditions in accordance with applicable collective bargaining agreements and current leave policies. Postal Service career nonbargaining unit employees can participate in a leave exchange program, through which a portion of annual leave that would otherwise be advanced to the new leave year can be exchanged for cash. The Postal Service now allows the use of 80 hours of sick leave for dependent care under a new policy available to all career employees.

c. Health Insurance. Health care contributions totaled $3.0 billion, or 7.0 percent of the Postal Service's total compensation and benefits during Fiscal Year 1996. Under the Omnibus Budget Reconciliation Act of 1990, the Postal Service is required to fund the annuitants' share of the FEHB premiums. During Fiscal Year 1996, the cost of funding the health care benefits for postal annuitants and their survivors was $497 million.

Pursuant to a 1993 interest arbitration award, the Postal Service continues to reduce its share of health benefit premium contributions, from a target average of 89 percent in 1994 to 86 percent in 1996. These reductions will continue through 1997, when they are projected to reach an average of 85 percent. Employees are automatically enrolled to pay health benefit premium contributions with pretax payroll deductions.

d. Life Insurance. The Federal Employees Group Life Insurance program provides life insurance coverage for Postal Service employees. The Postal Service assumes the full cost of basic life insurance for all eligible employees. During Fiscal Year 1996, Postal Service costs for employee life insurance were $182 million.

e. Retirement Systems. At the end of Fiscal Year 1996, there were 760,966 career Postal Service employees. Of this total, 417,948 (54.9 percent) were covered by the Federal Employees Retirement System (FERS) and 328,270 employees (43.1 percent) were covered by the Civil Service Retirement System (CSRS). The remaining 2 percent of career postal employees have dual coverage. By the end of Fiscal Year 1996, 317,475 postal employees under FERS contributed to the Thrift Savings Plan (TSP),

which provides a minimum agency contribution of 1 percent and matching contributions of up to 4 percent. Maximum agency contribution is limited to 5 percent of basic pay. Although there is no agency contribution for CSRS participants, 150,445 postal employees covered by CSRS made voluntary contributions to TSP.

f. Flexible Spending Accounts. Employees continue to take advantage of Flexible Spending Accounts (FSAs) to pay for certain health care and dependent care expenses, with contributions made through pretax payroll deductions. FSAs were first offered in 1992 to certain nonbargaining unit employees and have since been expanded to include all employees. In 1996, 33,604 employees were enrolled in health care FSAs (a 28 percent increase from 1995), with an average contribution of $1,126. In 1996, 4,914 were employees enrolled in dependent care FSAs (an 18 percent increase from 1995), with an average contribution of $2,767. The projected Fiscal Year 1996 savings for the Postal Service resulting from the FSA program is approximately $950,000 (net of administrative expenses). Employees experience tax savings as well, which vary according to the individual's contribution amounts and marginal tax rates.

4. Training and Development

a. General. During 1996, Corporate Training and Development (CTD; formally Management and Employee Development) moved its function from Chicago, IL, to Washington, DC, and chartered a BPR team to examine the future direction, staffing, and business processes of

the training function. Objectives were aligned with *CustomerPerfect!* initiatives, and the BPR recommendations were implemented.

A major initiative for CTD was developing and delivering Voice of the Employee training, "Training Focus '96." It offered a minimum of 20 hours of training to all EAS employees level 15 and above. The curriculum provided skills development in three areas: process management, interpersonal and intrapersonal skills, and job-related training. CTD surpassed its projected 1996 goal and trained over 97 percent of the targeted audience.

The New Directions Program continued to provide hands-on training in team building and leadership skills for postal managers and their staffs. New Directions delivery expanded, with program offerings at the W. F. Bolger Center for Leadership Development in Potomac, MD, and the Technical Training Center in Norman, OK. This year New Directions provided training for over 2,800 employees.

In August, the first forty-seven EAS and craft employees graduated from the Associate Supervisor Program (ASP), a 16-week training program for first-line supervisors. ASP was created to replace the current supervisor training and selection process. The program's goals are to improve the level of work floor supervision, to improve productivity, and to improve the quality of work life for craft employees. The program will begin its nationwide implementation in 1997 and is endorsed by the NAPS.

INSIGHTS, the newly revised systematic development and feedback process, was implemented this year. The process identifies strengths and areas for improvement for PCES managers and individuals identified as successors to executive positions. The primary purpose is to provide feedback to individuals on how they are perceived in the workplace by their managers and peers and to direct reports relative to management skills critical for executive success.

The Local Employee Training System was implemented this year. This Access-based application tracks training activities and generates reports for local analysis. It includes specific information on employee training history and course utilization.

The New Employee Training Orientation was revised to introduce new employees to the Postal Service through such topics as postal heritage, culture, quality, and corporate goals. Its vital topics include ethics, diversity, environmental responsibility, and the sanctity of the mails. New Employee Training Orientation for new hires for the Remote Encoding Centers (RECs) was also completed. While this training includes many of the basic topics for new employees, it requires a significantly different approach and is more reflective of the unique REC environment.

During Fiscal Year 1996, the CTD Media Unit broadcast over 500 hours of programming on the Postal Satellite Training Network (PSTN). Over 40 hours of the training were devoted to Classification Reform, reaching a nationwide audience of over 8,000 postal and business managers, including major mailers.

The William F. Bolger Management Academy in Potomac, MD, was renamed this year by the Board of Governors. The new name, the William F. Bolger Center for Leadership Development, reflects its new mission as a national training and conference center for the Postal Service. Use of the Center increased steadily over the year, reaching the highest overall monthly utilization rate in over four years. Technological upgrades were made in the conference and training facilities; improved financial procedures were put in place; and a new contract for the operation and maintenance of the Center was awarded.

b. Technical Training. Technical training provides essential support for the efficient operation of mail-processing equipment, data communications, building systems, and postal vehicles. In Fiscal Year 1996 the Technical Training Center (TTC) in Norman, OK, achieved its fourth year of continuous improvement since the 1992 postal restructuring, exceeding the number of employees trained in Fiscal Year 1992 by nearly 100 percent. The Center offered 190 courses on major postal systems and equipment. TTC conducted 2,362 class offerings for 39,475 employees, totaling over 210,707 training days. Over 60 percent of national technical training was delivered to employees in local offices, primarily through distance-learning networks, at significant travel savings to field offices. TTC's cost-effectiveness also continued to improve, as Fiscal Year 1996 technical training was delivered with a TTC operating expense that was $6.52 less per training day than in Fiscal Year 1995, and over $11 per training day less than in Fiscal Year 1980, in 1980 dollars.

This year marked the tenth anniversary of postal distance learning, since TTC piloted audio teletraining in

September 1986. Since then, TTC has documented national postal savings of over $40 million from distance training, primarily in reduced travel costs. Efforts continue to expand and enhance the postal-owned networks.

- A contract to expand and upgrade the Postal Audiographics Training Network (PATN) to multimedia capability was awarded in September 1996. PATN uses teleconferencing and interactive computers to link TTC instructors to employees in their home offices. About 500 new audiographics systems will be deployed, expanding the network to over 800 systems and reaching every maintenance-capable mail-processing office. The systems will also support stand-alone, computer-based interactive courses.

- Contracts were also awarded to convert the PSTN to compressed digital transmission. Digital transmission of satellite broadcasts will reduce national costs to rent satellite time and will simplify offering multiple, simultaneous broadcasts. Over 300 new digital downlink systems will be installed, and the three PSTN uplink sites will be converted for digital transmission. TTC will serve as the national hub.

Major training initiatives included the following:

- National-level Environmental Protection Agency and Occupational Safety and Health Administration compliance training expanded from sixteen topics to twenty-five and was conducted for over 8,200 managers and technicians. Over 3,400 people were trained using distance learning (PSTN/PATN), and 3,000 received training on site, drastically reducing travel and per diem costs for this training.

- Training support for the RBCS at 104 new Processing and Distribution Centers (P&DCs) and the supporting RECs was nearly double the amount reported for 1995. TTC provided eight weeks of RBCS training for each of 1,242 employees from 147 earlier-deployed RBCS facilities, 57 RECs, and the 104 new RBCS deployment sites. The curriculum included telecommunications networking technology, remote computer readers, and the input, output, and image-processing subsystems.

- TTC completed construction of a 30,000-square-foot multipurpose conference complex attached to the existing housing facility. The central room can seat 1,000 people theater style or 650 banquet style. The complex hosted the National Executive Conference in October 1996.

c. **Postal Career Executive Service Training.** During Fiscal Year 1996, the Postal Service sponsored two individuals as Sloan Fellows at the Massachusetts Institute of Technology and at Stanford University. Two individuals were also sponsored at American University.

d. **National Prevention of Sexual Harassment and Diversity Education Programs.** The Manager of Diversity Programs in Diversity Development heads a National Prevention of Sexual Harassment and Diversity Education Program Task Team. This team comprises members representing various operational units throughout the Postal Service and field diversity development specialists throughout the nation. This year the team concentrated its efforts on developing communication and training programs to address the problem of sexual harassment in the workplace.

To communicate the reality and severity of this problem, the team developed and distributed to employees, on a periodic basis, a series of talks to explain how employees can recognize and take action to prevent sexual harassment. The team also developed and published Publication 552, "Manager's Guide to Understanding Sexual Harassment"; the publication will soon be made available in Spanish. A companion guide is also being developed for postal employees.

In addition, as part of the team's continuing awareness campaign, it contributed to the September/October issue of *Postal Life* magazine a seven-page article entitled "It's About Abuse of Power, Not Sex." Public service advertisements initiated and developed by the team have also appeared in *Fortune, Ebony, New Woman, Hispanic, Pan Pacific, Entrepreneur,* and other national magazines.

Although the team's awareness program has begun, it is far from complete. In the near future, all employees will receive a postcard from Postmaster General and Chief Executive Officer Marvin Runyon that will include a tear-off wallet card describing steps they should take if they feel they are being sexually harassed. The team will also be publishing a revised policy statement on sexual harassment to be posted in every postal facility, and is completing a management instruction to guide supervisors through the process of investigating complaints and circumstances that may constitute sexual harassment.

In October, the team piloted an eight-hour course in Charlotte, NC, to train managers and employees in the prevention of sexual harassment. In Fiscal Year 1997, the team will premier both the managers' training course (in

English and Spanish) and the new computer interactive version for employees (currently under development in both languages).

The team also has many other goals on the agenda for the coming year, including the development of diversity education training programs in such important subject areas as cross-cultural communications, race relations, gender communications, and sexual orientation.

5. **Employment and Placement**

a. Individual Performance Assessment. Individual Performance Assessment is a formal process designed to improve managerial competency through a process of continuous development. This process aids in the development of effective management behaviors through manager-to-subordinate-manager teamwork to achieve specific objectives. A comprehensive implementation package was developed, including instructional pamphlets and a three-part video training series.

b. Merit Pay Performance Evaluation. The Merit Pay Performance Evaluation program was developed and implemented to evaluate and reward each EAS employee's contribution to the success of the work unit. This program is closely aligned with *CustomerPerfect!* philosophy and emphasizes each employee's link to overall corporate goals.

c. National Test Administration Center Activity. During Fiscal Year 1996, the Postal Service administered and processed more than 500,000 entrance examinations,

including over 100,000 computer-administered examinations. We continued our efforts to streamline examination administration by adding the Mail Classification examination to the list of computer-administered examinations.

D. Postal Cost Apportionment and Postal Ratemaking Developments
(39 U.S.C. 101 (d))

1. Classification Reform

The Postal Service revised outdated business practices and strengthened its relationship with customers by implementing the first major postal Classification Reform in over a century. Classification Reform began in early 1995 with the filing of a request with the Postal Rate Commission (Docket No. MC95-1) for changes in the Domestic Mail Classification Schedule (DMCS) and associated rates. In its filing, the Postal Service proposed that domestic mail classifications be modernized by redefining and repricing products to better match customer capabilities and Postal Service operational needs. The Postal Service proposed changes in class terminology, so that Express Mail would be renamed Expedited Mail; Third and Fourth Class Mail would be merged into a single Standard Class; and Second Class Mail would be renamed Periodicals. Within each of the new classes, the Postal Service proposed the creation of new subclasses to better align prices with market and demand characteristics. Specifically, the Postal Service proposed that the

First-Class Letters and Sealed Parcels and Postcard subclasses be reorganized into Retail and Automation subclasses; that the Second Class Regular Rate be divided to create a separate subclass for low-cost publications; and that the Bulk Rate Regular subclass be split into Regular, Automation, and Enhanced Carrier Route subclasses. Unlike the 1994 omnibus rate case, this proceeding was not designed to raise additional revenue in total; rather, the net revenue forecast was kept constant for the categories in the Classification Reform filing.

The proposals received widespread support from mailers, and the proceeding culminated in a generally favorable opinion and recommended decision of the Postal Rate Commission. Although the Commission did not recommend all of the subclass changes the Postal Service sought, the Commission did recommend the service-based class terminology the Postal Service sought, along with the creation of an Enhanced Carrier Route subclass in Standard Mail, more favorable work-sharing discounts for automation compatible letter and flat mail, and higher rates for nonbarcoded, noncarrier route letter and flat mail.

In March 1996, the Governors announced, with two exceptions, approval of all of the Commission's recommended mail classification changes and related rates. The Board set July 1, 1996, as the implementation date for the changes. The Governors voted to reject the Commission's recommended decision to establish a shell classification for Courtesy Envelope Mail and to designate bulk parcel post as a rate category in Standard Mail. The Governors' decisions better position the Postal Service to meet the challenges of the next century by holding the line on

costs, matching product offerings to customers' needs, simplifying administration, and reducing complexity.

a. American Mail-Order Manufacturers Association Litigation. In the weeks preceding the implementation of Classification Reform, advertising mail trade associations attempt to block implementation of a mailing requirement promulgated pursuant to the classification schedule approved by the Governors. The requirement at issue specified that in order to qualify for discounts for automation-compatible mail presorted to five-digit destinations, mailers must present mail in full trays with a minimum 150 pieces per tray.

The trade associations filed a complaint with the Postal Rate Commission, challenging the Postal Service's authority to promulgate the 150-piece per tray minimum. Simultaneous with the filing of their complaint, the trade associations brought suit in district court to enjoin the Postal Service from implementing the requirement pending resolution of the complaint proceeding at the Commission. The Postal Service succeeded in defending the challenge by moving to dismiss in both venues. The Postal Service maintained that the mailing requirement was authorized by the underlying provision in the classification schedule. Indeed, mailers were given notice of the intended change throughout the Classification Reform process, and they had ample opportunity to cross-examine postal witnesses on that topic during the Classification Reform proceeding. The Commission promptly dismissed the complaint, thereby rendering the court action moot.

b. Dow Jones Litigation. Dow Jones & Co. filed a petition to review the Governors' acceptance of the Classification Reform recommendations of the Postal Rate Commission regarding what was previously Second Class Mail. In Docket No. MC95-1, the Postal Service had proposed to change the name of the mail class to Periodicals and, much more important, to divide the Regular Rate subclass into two new subclasses – C Regular and Publication Service. Eligibility for the Publication Service subclass would have been contingent upon a mailer's ability to perform a high level of work-sharing, which would have resulted in lower costs for the subclass and, consequently, lower rates. Rates for those mailers who could not qualify for the Publication Service subclass would have increased.

The Commission recommended the proposed change in the name of the mail class, which is now known as Periodicals, but rejected the creation of the two new subclasses. Instead, based directly on the existing classification structure, the Commission increased the proportion of the work-sharing cost savings passed through in the form of discounts. As with the Postal Service's proposal, the result was rate increases for some mailers and rate decreases for others, but the magnitude of such rate swings was substantially mitigated. Dow Jones' rates would have decreased under the Postal Service's proposal, but they actually increased under the Commission's recommendations. Broadly speaking, Dow Jones challenges two aspects of the proceedings: the Commission's rejection of the Postal Service's proposal on the

merits and, given that rejection, the legality of the Governors' approval of the Commission's alternative recommendations.

c. **Alliance of Nonprofit Mailers Litigation.** This suit was filed in the DC Circuit Court following Docket No. R94-1 by the alliance of Nonprofit Mailers. The substance of the challenge was that, in their view, the new nonprofit rates established in that case continued to fail to grant discounts sufficiently deep to properly recognize mailer work-sharing activity. As the Classification Reform process progressed, however, it was mutually recognized that the rate relief sought by the Alliance might be forthcoming during nonprofit Classification Reform. Once the Postal Service filed its nonprofit reform proposal in Docket No. MC96-2, court proceedings were held in abeyance. Now, the successful resolution of the nonprofit phase of Docket No. MC96-2, described below, appears to have eliminated any need for further court proceedings, and the appeal will likely be withdrawn by mutual consent.

2. Nonprofit Classification Reform

Following approval by the Governors of the Commission's recommendations in the first phase of Classification Reform, the Postal Service moved quickly to extend the same benefits of Classification Reform to nonprofit mailers. Docket No. MC96-2 was filed in April, seeking new rate and classification structures for nonprofit mailers that would parallel those established for commercial mailers in Docket No. MC95-1. By basing its proposals closely on the methodologies and findings already

made by the Commission in that earlier case, the Postal Service was able to minimize controversy and gain substantial mailer support. A proposed settlement was submitted, and the record was completed on an expedited basis, without any need for oral cross-examination or rebuttal testimony. After briefing, the Commission issued its recommended decision on July 19, less than four months after the request was filed. The Governors approved the Commission's recommendations in August, and the Board set the implementation date for the rate and classification changes to coincide with implementation of the next step in the phasing schedule in early October.

The Commission recommended all of the proposals advanced by the Postal Service, except those relating to Classroom Mail. The Commission noted that the rates for Classroom Mail had failed to generate sufficient revenues to cover its costs in Fiscal Year 1994 and Fiscal Year 1995 and that the changes proposed in Docket No. MC96-2 would not be expected to alter that situation in Fiscal Year 1996. Under the Commission's interpretation of the statute, changes for Classroom Mail could therefore not be recommended as proposed. Instead, the Commission ordered the record to be reopened for the purpose of receiving more evidence about costs and revenue trends for Classroom Mail and for entertaining additional proposals to resolve the situation. In October, the Postal Service filed two pieces of testimony specifically addressing cost and volume issues relating to Classroom Mail. Further proceedings are anticipated if the Commission is to issue any recommended decision on Classroom Mail.

3. Special Services Reform

On June 7, 1996, the Postal Service filed at the Postal Rate Commission a case to reform several special services, including post office box and caller services, certified mail, return receipts, insured mail, and registered mail. The Postal Service also proposed eliminating special delivery service and adding a new special service fee to directly recover manufacturing costs for postal cards. The case seeks to better reflect market conditions, realign fees to reflect costs, and streamline product offerings. Especially noteworthy is that the proposed reforms, if accepted, would contribute over $300 million per year to Postal Service revenues. The case is in the middle of the hearing process, and a Recommended Decision from the Commission is expected early in 1997.

4. Parcel Barcode Experiment

On December 19, 1995, the Postal Service filed a Request with the Postal Rate Commission for an Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, requesting a 4-cent discount for certain bulk prebarcoded First-Class Mail and Priority Mail small parcels entered for processing at three test sites on a two-year experimental basis. The 4-cent discount was based on an estimate of the cost difference between keying a nonbarcoded parcel and scanning a barcoded parcel. This was only the second case ever filed under the Commission's experimental rules. On March 13, 1996, the Commission recommended everything the Postal Service requested, with the exception of a few minor changes in DMCS language, making this the first

experiment ever recommended by the Commission. The Governors and the Board ordered the changes into effect on April 1, 1996. The Postal Service is now engaged in ongoing monitoring and data collection.

5. Changes in Procedural Rules

On April 13, 1995, the Postal Service had petitioned the Commission to adopt procedural rules designed primarily to facilitate expedited consideration of Postal Service requests and to allow more flexible pricing by the Postal Service. The rules were to implement seven initiatives. On May 7, 1996, the Commission adopted rules to implement four of these initiatives and deferred consideration of the other three, stating that those three areas merited further study in subsequent proceedings. The Commission adopted rules in these four areas:

- Allowing the Postal Service to conduct market tests of new postal services in order to develop information necessary to support a permanent classification change and allow expedited consideration of the Postal Service's request;

- Allowing expedited consideration of provisional classification and associated rate changes that supplement, but do not alter, existing rates and classifications;

- Facilitating expedited consideration of requests to adopt permanent, but narrowly focused, mail classification changes; and

- Allowing the use of multiyear test periods to demonstrate the financial viability of new services.

The Commission deferred consideration of rules in these three areas:

- Providing rules for rate cases of limited scope;
- Allowing the creation of rate bands for competitive services; and
- Allowing negotiated service agreements.

All of the rules adopted are supplemental to the Commission's existing rules. That is, all the existing data provision requirements will apply to requests filed under the new rules. To the extent that information responsive to the applicable, existing rules is not available, the Postal Service must still seek a specific waiver of those rules.

E. Transportation Policies (39 U.S.C. 101 (f))

1. General

The Postal Service spent $3.73 billion in Fiscal Year 1996 for the contractual transportation of mail. This figure represents a 7.8 percent increase over 1995 transportation expenses. Mail transportation expenses accounted for 6.80 percent of total postal costs in Fiscal Year 1996.

2. Domestic Transportation

a. Air Transportation. Air transportation costs in Fiscal Year 1996 totaled $1.26 billion. The Postal Service contracts with seventy-four commercial airlines to move more than 2.5 billion pounds of domestic mail each year. Ten of these airlines handle 80 percent of the volume. The Postal Service uses approximately 15,000 flights of the

56,000 that the airlines make available daily for the air transportation of mail. To supplement the movement of mail by air, the Postal Service operates its Eagle Hub in Indianapolis, IN. The Hub operates with twenty-nine aircraft and serves forty-six cities directly. The Eagle Hub transports more than 750,000 pounds of mail each night and about 90 percent of all Express Mail that moves by air. In addition, during the Christmas rush period, the network expands to encompass a daytime service that transports more than 1 million pounds of Priority Mail each day for a 13-day period.

b. Rail Transportation. Postal Service expenses for rail transportation were $254 million in Fiscal Year 1996. This represents a 3.3-percent increase over Fiscal Year 1995. A new, two-year contract with freight rail carriers went into effect in September 1995. The Postal Service holds contracts with eleven railroads, which perform service on approximately 1,700 rail segments.

In Fiscal Year 1996, the Postal Service paid Amtrak $63 million for rail transportation services. Expanded service accounted for the 5-percent increase over Fiscal Year 1995 payments. Amtrak provides service for the majority of the periodicals transportation network.

c. Highway Transportation. The Postal Service expended approximately $1.54 billion for highway mail transportation in Fiscal Year 1996, an 8-percent increase over Fiscal Year 1995. There were approximately 15,500 highway contract routes operating during Fiscal Year 1996. Roadside receptacles were served by nearly 40 percent of these routes, which also transport mail between postal facilities.

d. Domestic Water Transportation. In Fiscal Year 1996, the cost of transporting mail to domestic offshore destinations was $24 million, a 4-percent increase over Fiscal Year 1995. During the same period, the Postal Service paid $20 million to U.S. flag carriers for this service.

3. International Transportation

a. International Air Transportation. In Fiscal Year 1996, the Postal Service spent $331 million for international air transportation. Of the total cost, $160.5 million was for military mail and $170.5 million for Express Mail International Service, Airmail, and International Surface Airlift. U.S. flag carriers were paid $261 million, and foreign flag carriers received $70.5 million. Foreign flag carriers are used for service to destinations where no U.S. carrier provides the required service.

b. International Surface Transportation. During Fiscal Year 1996, international surface transportation costs were $11.0 million. This covers all surface mail sent by sea. U.S. flag carriers were paid $1.9 million and foreign flag carries $9.1 million. The selection of carriers is based on price and service to the required destinations.

4. Postal-Owned Transportation

The Postal Service's active vehicle fleet consists of 202,224 postal-owned vehicles and 6,555 leased vehicles. These vehicles provide transportation primarily for the carrier delivery network. Approximately 9,600 vehicles are used to haul mail between facilities, airports, and

private mailers' plants. In Fiscal Year 1996, total expenses were $773 million, an 11.4-percent increase over Fiscal Year 1995.

Due to the expanding delivery network, the number of miles traveled in Fiscal Year 1996 increased 1.7 percent. Vehicle Operating Trends are shown in Table 1.1. Vehicle Type/Vehicle Inventory is displayed in Table 1.2.

5. Mail Transport Equipment

Mail Transport Equipment (MTE) "moves the mail." MTE comprises the sacks, trays, pallets, and wheeled containers that virtually every piece of mail is contained in and moves on, from collection through processing to delivery. Our customers, processing facilities, and post offices depend on the continuous availability of MTE and we have made a commitment to never run out of MTE. In Fiscal Year 1996, we spent $190.5 million for new equipment and $30 million for warehousing to ensure its uninterrupted supply.

The peak mailing season was extraordinarily smooth in Fiscal Year 1996, due to planning with the top 220 mailers and close inventory control. The implementation of Classification Reform this summer provided a special challenge in meeting our customers' changing and uncertain demands for trays and pallets. Through careful management and rapid resupply response, no major mailers experienced shortages of equipment and the commitment to never run out of MTE was again fulfilled.

Table 1.1
Vehicle Operating Trends

	FY 1996	*FY 1995*	
Number of vehicles	202,224	203,695	
Percent change	–0.70	+0.9	
Miles traveled	1,104,854,773	1,086,061,112	1,009
Percent change	+1.7	+7.5	
Miles per gallon	9.7	9.8	
Percent change	–1.0	+1.6	
Cost per vehicle	$3,765	$3,282	
Percent change	+14.7	+12.9	
Cost per mile	$0.69	$0.64	
Percent change	+7.7	+4.1	

FY 1994	FY 1993
201,841	188,979
+6.8	+5.6
944,798	956,183,622
+5.6	+3.9
9.6	9.7
–1.0	+1.0
$2,906	$2,706
+7.4	+4.7
$0.615	$0.585
+5.1	+0.3

Table 1.2
Vehicle Type/Vehicle Inventory

Vehicle Type	*FY 1995*
1/4-ton	27,321
1/2-ton	144,934
1-ton	1,613
2- and 2 1/2-ton	6,502
5-ton	35
7-ton	914
9-ton	1,674
Tractors	1,757
Tractors, spotter	406
Trailers	4,816
Plant maintenance vehicles	2,864
VMF service vehicles	1,528
Administrative vehicles	7,383
Mobile post offices	201
Miscellaneous vehicles	276
Total postal-owned	202,224
Leased vehicles	6,555
Total active vehicles	208,779

F. Postal Facilities, Equipment, and Employee Working Conditions
(39 U.S.C. 101 (g))

1. Safety and Health

During 1996, a special safety management program was implemented that focused on reducing accidents and ensuring prompt identification and correction of safety deficiencies at major postal facilities. This program was continued during 1996. Safety Advisory Teams were established at the national and area levels to monitor abatement actions and to assist management on accident prevention.

The Postal Service utilized the National Safety Council to provide a series of professional safety and health courses to full-time Postal Service safety professionals. Safety is also incorporated into craft, supervisory, and management training programs.

In accordance with the collective bargaining agreements with the national unions, joint labor/management safety and health committees function throughout the Postal Service. During 1996, the Postal Service continued its safety policy of scheduling annual inspections of all occupied postal facilities, with accelerated inspections conducted at mechanized or automated sites. Consistent with collective bargaining agreements, union representatives may participate in these inspections.

The "no smoking" policy, first implemented in 1993, remained in effect during the year. This policy bans smoking in all buildings and office space occupied by the Postal Service, whether owned or leased. In 1996, Postal

Service safety officials continued to focus their attention on environmental programs. Subjects included asbestos, lead radon, hazardous materials, waste management, and underground storage tanks.

The Postal Service recognized more than 100,000 employees for operating motor vehicles throughout the year without experiencing a preventable accident. This safe-driver award program is sponsored by the National Safety Council. In 1996, the Postal Service presented the Million-Mile Club Award to those employees who completed 30 years or one million miles of safe driving performance. According to the National Safety Council, more than 3,000 postal drivers have earned the Million-Mile Club Award since its inception.

2. Environmental Program

Environmental issues affect our core business. Collecting, transporting, processing, and delivering more than 180 billion pieces of mail annually in an efficient yet environmentally friendly manner is a challenge to every postal employee. Adapting existing industrial technologies to postal use, such as the Tray Management System and robotic cells, helps us be more competitive while creating a safe and healthy work environment. In the maintenance area, we are using chemicals that are less toxic and less hazardous. Recycling is becoming a way of life within the Postal Service.

To address environmental issues in an integrated manner, the Postal Service has developed an Environmental Strategic Plan, which is built on a two-pronged

strategy of leadership and compliance. To ensure compliance with this goal, we are conducting Quality Assurance Reviews throughout the organization. Environmental professionals review postal facilities and identify activities that need improvement to comply with applicable laws, regulations, and postal policy.

Our alternative fuel vehicle fleet is the most visible contribution of the Postal Service to clean air. The Postal Service has converted about 7,000 vehicles – nearly 5 percent of our delivery fleet – to natural gas. We continue to test ethanol-powered passenger vehicles. We have also converted six Long-Life Vehicles to electricity and plan to convert an additional twenty-five vehicles.

In addition to alternative fuels, the Energy Act of 1992 requires the Postal Service to reduce energy use by 20 percent by the year 2000. Our major strategy toward accomplishing this reduction is to adapt new technologies in lighting and to use high-efficiency motors.

We foster the use of sustainable resources by promoting pollution prevention, reducing waste, and recycling and reusing materials. We use "green" products to maintain our equipment and linerless labels for address correction; we purchased more than 100,000 retread tires for the vehicle fleet and use re-refined oil in about 50 percent of postal vehicles; and we created postal products with recycled content.

A "Greening of the Mail" Task Force – which includes representatives from the U.S. Conference of Mayors, ADVO, the Direct Marketing Association, the Environmental Protection Agency, and the Texas General

Land Office – was created in 1996 to identify new business opportunities, to increase recycling, and to promote the perception of mail as an environmentally friendly product.

We need to focus on consistent implementation at all postal facilities in all functional areas. Our latest effort is the online Environmental Management Information System, which is now being deployed. This system will provide real-time data to environmental professionals and other postal managers.

Another measurement is how others view your work. In addition to Energy Management and Shared Energy Awards, the Postal Service also received numerous national, state, and local environmental awards in Fiscal Year 1996 – including seven White House "Closing the Circle" awards and five of Vice President Al Gore's "Hammer" awards. We were also recognized by our customers, with the Direct Marketing Association's Robert Rodale Environmental award for making mail more recyclable.

As part of its environmental program, the Postal Service continued its Underground Storage Tank (UST) program to remediate and upgrade existing underground fuel tanks. The Postal Service maintains an inventory of USTs to store and dispense petroleum products in support of heating and vehicle-fueling requirements. Since the start of this program in 1988, 5,566 projects for testing, repair, replacement, improvement, and contamination cleanup have been initiated. The Postal Service has committed over $210 million to this program in our

efforts to meet federal, state, and local environmental regulations for storage tanks.

3. Energy Management

During Fiscal Year 1996, the Postal Service continued its efforts to reduce energy consumption by 20 percent by the year 2000, as mandated by the Energy Policy Act of 1992. Engineering provides policy, technical, and program guidance to postal field units regarding conservation initiatives.

Computerized energy audits have been completed at over 600 major facilities. Efforts to implement the audit findings are presently under way. In addition, in Fiscal Year 1997 the energy program is scheduled to perform energy conservation surveys that are developed as a means of auditing all facilities between 5,000 square feet and 50,000 square feet in size. With this additional coverage, the energy program will be able to expand projects into the medium-sized facilities.

The Postal Service has partnered with the Department of Energy (DOE) in the "Showcase for Energy" program by identifying three postal facilities for inclusion in this worthwhile initiative: Portland, OR; St. Paul, MN; and Fort Lauderdale, FL. These facilities will assist the DOE in testing new technologies and designs for energy-conservation systems and devices. The results of these tests will be transferred to other federal and private organizations.

The Shared Energy Savings (SES) Program is an integral part of the overall Postal Service energy program.

The SES Program allows the Postal Service to improve its energy infrastructure and to reduce energy consumption without using postal funds. Due to financial restrictions, energy companies provide the financing for energy-related projects and the Postal Service uses actual energy savings derived from the projects to pay for the improvements over time. The net payments made by the Postal Service are less than the former energy payments.

The Postal Service has recently been awarded five energy awards by the DOE. Individual Energy Efficiency/Management awards were given to David Bowden, Baltimore P&DC, and Leslie Fish, Portland District Environmental Compliance Coordinator; an Individual Energy Savings Performance Contracting award was given to David Scherer, USPS Headquarters; a Small Group Energy Efficiency/Management award was given to Portland District Project; and an Organization Energy Savings Performance Contracting award was given to Church Street, P&DC.

For example, the Church Street P&DC has received several million dollars in rebates from Con Edison as a direct result of the energy program. Additionally, the facility enjoys an annual savings of over $700,000 from the energy conservation elements installed. The Midwest Area has surveyed over 850 facilities for energy conservation initiatives. The results of this survey include the identification of over $1.2 million in energy improvement projects with a return on investment of 30 percent or greater.

4. Real Estate Inventory

The Postal Service's real estate holdings are outlined below.

Total owned facilities	6,947
Total owned interior square feet	168,097,506
Total owned land in square feet	772,182,487
Total leased facilities	28,823
Total leased interior square feet	97,631,577
Total GSA/other government facilities	469
Total GSA/other government interior square feet	4,190,280
Annual rent paid to lessors	$571,015,696
Annual rent received from tenants	$72,700,000

5. Purchasing and Materials

a. Purchasing and Materials' Strategic Plan. One of the highlights of Fiscal Year 1996 was the development of a far-reaching Purchasing and Materials' Strategic Plan. Constructed upon the basic framework of the Postal Service's *CustomerPerfect!* initiative, the plan is intended to transform Purchasing and Materials from a transaction-oriented organization into a business partner of choice for internal customers and Postal Service suppliers.

For each of the three Voices of *CustomerPerfect!* (Voice of the Business, Voice of the Customer, and Voice of the Employee), the strategic plan identified areas in which Purchasing and Materials could make the greatest improvement and contribution in our purchasing, inventory, and distribution management functions. Adapting and improving policies, procedures, and information systems to focus more effectively on the business and competitive needs of the Postal Service is a central tenet of

the plan, as are strengthening supplier relationships and supplier diversity, providing more avenues for employee recognition and empowerment, and forging the strongest business partnerships possible with our internal customers. The plan will be officially launched in Fiscal Year 1997.

b. Policies. Fiscal Year 1996 saw the first complete revamping of purchasing policies since 1987. The new policies, which will be contained in a new Purchasing Manual (replacing the old Procurement Manual), are the result of a year-long review and redrafting effort by representatives of the Postal Service's Purchasing and materials, Diversity Development, and General Counsel organizations. They contain several breakthrough concepts and purchasing approaches designed to make all purchasing actions reinforce the Postal Service's business and competitive objectives and to positively affect its bottom line.

Among the more significant concepts and approaches is a heightened focus on teamwork among the contracting officer, internal customers, and others involved in the purchase. These purchase teams will result in more customer involvement in the purchasing process and in better overall coordination and increased customer satisfaction. A policy of prequalification, which has long been used in Postal Service purchasing, will continue as before, but it will be carefully reviewed to ensure its appropriate use in each instance. At the same time, supplier diversity has received heightened attention as a major strategic initiative of the Postal Service, and the new policy mandates that contracting officers ensure that the Postal Service's supplier base reflects the diversity of

the American supplier community and that they publicize purchase and prequalification opportunities throughout the marketplace so that all interested suppliers can take part. Commercial purchasing practices are also being adopted for those supplies and services available in the commercial marketplace. Finally, the new policies represent the culmination of the Postal Service's efforts to consolidate buying organizations and practices, an effort begun in Fiscal Year 1994.

c. **Process Simplification.** One of the central tenets of the new purchasing policy is a streamlined purchasing process applicable to all Postal Service purchases. The new process eliminates several steps whose value was outweighed by the time and effort required. This also allows much better communication between purchasing teams and potential suppliers. The new process will lead to better purchasing decisions and uniform treatment of internal customers and suppliers.

Electronic commerce was also highlighted in Fiscal Year 1996. The new purchasing policy highlights this contracting method as offering high potential for improving cost savings, supplier communications (especially during contract administration), and overall efficiency. During Fiscal Year 1996, electronic commerce began with eighteen suppliers, and it is estimated that more than $15 million worth of business is currently being conducted in this manner. Along this line, Major Facilities Purchasing is now transmitting design and construction solicitations via the Internet, an initiative that has proven cost-effective.

Simplification in design and construction contracting has also resulted from two initiatives begun in Fiscal Year 1996. The first involved a complete review of all relevant contract clauses to determine their relevance and utility. The clauses will be updated and deleted as necessary to ensure the clarity and effectiveness of these types of contracts. The second initiative was the development of partnering agreements modeled on construction industry standards. The results are contractual formats closely resembling those of the American Institute of Architects and other construction industry organizations.

A pilot program designed to simplify the contract box delivery process began in the San Antonio and New Orleans districts during Fiscal Year 1996. The Box Delivery Improvement Process (BDIP) provides expedited start-up and delivery service, reduces cycle times for new deliveries, and reduces the per-delivery cost of the Postal Service. During Fiscal Year 1997, the BDIP will be implemented throughout the country.

d. Professional Development. Purchasing and Materials manages one of the federal government's most extensive purchasing and materials management professional development programs. All courses offered (within both disciplines) receive college credit recommendations from the American Council on Education, and during the past fiscal year more than 1,200 purchasing and materials professionals attended sixty-seven courses. In addition, a newly developed Local Buying with the IMPAC Credit Card course was broadcast over the PSTN to more than 9,000 participants during a four-day span. The course was designed to educate or update credit card holders, approval officials, and agency program officials and to

provide them with policy information and guidance in the credit card purchasing program.

In light of the significant overhaul of the Postal Service's purchasing policies, a number of current courses were revised and redesigned to reflect the changes and to stress purchasing's role in furthering the Postal Service's business and competitive objectives. Three new courses have been added: Fundamentals of Purchasing – Theory and Practice, Commercial Purchasing, and Advanced Purchasing. Also, the entire curriculum has been updated to emphasize *CustomerPerfect!* and Purchasing and Materials' strategic direction.

Under Office of Government Ethics guidelines, the Postal Service must provide certain employees with a minimum of one hour of Annual Ethics Update Training. In Fiscal Year 1996, the Postal Service, in conjunction with several federal agencies, developed a computer-based Ethics Training program. This program will meet the annual requirements more efficiently than in years past.

e. Materials. A major highlight of Fiscal Year 1996 was the opening of the new South River, NJ, Materials Distribution Center (MDC) in August. For 53 years, the Postal Service has leased from the Veterans Administration 571,000 square feet of inventory space in five separate buildings in Somerville, NJ. Operations now take place in one modern 312,000-square-foot facility, housing more than 3,000 supply items; this will greatly enhance inventory management and customer service. A new materials management system will also improve services. During Fiscal Year 1996, the initial phases of the Materials Distribution Inventory Management System (MDIMS)

were deployed at the South River (NJ) and Topeka (KS) MDCs. MDIMS uses barcodes, radio frequencies, pick-to-light carousels, and state-of-the-art materials-handling equipment to perform material management functions more efficiently and effectively.

Located at the Topeka MDC, the Label Printing Center (LPC) played a significant role in Fiscal Year 1996 Classification Reform. The LPC prepares, prints, and distributes the Postal Service's tray, sack, and pouch labels, as well as other material used in mail processing. As part of the Classification Reform, the LPC completely revised the required labels, producing more than two billion in one month (annual production is usually three billion), thereby advancing this important strategic initiative. Another Materials organization also met the challenge of increased workload. The Critical Parts Center (CPC) in Indianapolis supplies operations throughout the country with spare parts. During the past fiscal year, demand and workload were up 27 percent; delivery accuracy was 99.9 percent for 115,000 shipments from the CPC.

f. **Quality Improvement.** In June, Purchasing and Materials' Quality Improvement organization oversaw the Postal Service's 1996 Quality Suppliers Awards. This program recognizes suppliers who demonstrate outstanding ability and commitment to providing quality goods and services. Thirteen suppliers were so recognized (out of seventy-nine applicants), representing the full spectrum of Postal Service suppliers and requirements (supplies, services and equipment, facilities design and construction, and mail transportation).

A Supplier Quality Council, established in 1995 to provide a forum for the exchange of ideas and viewpoints between the Postal Service and its suppliers, was expanded to include eight suppliers and eight Postal Service representatives. The Supplier Measurement and Tracking System, which captures supplier performance data, was also expanded. As a supplier's past performance becomes an increasingly important means of contract award selection, the role and value of this system is growing.

g. Energy and Environmental Purchasing. In Fiscal Year 1996, Purchasing and Materials continued to support the Postal Service's corporate goals in reducing energy use and strengthening environmental support. In recognition of efforts to reduce energy use and expenses, the DOE Management Program cited the Postal Service with the Federal Energy and Water Management Award. In the environmental area, the Vice President awarded the Hammer Award to the Postal Service for its Affirmative Procurement Program for paper and paper products. This program also received the Federal Environmental Executive's Closing the Circle Award. Model solicitations and contracts developed by Purchasing and Materials helped the Postal Service realize more than $6.6 million in recycling revenue and $20 million in projected savings due to reduced energy use.

h. Major Purchases. During Fiscal Year 1996, the Postal Service made more than 45,000 contractual actions, totaling approximately $7 billion. Among the major purchases made during Fiscal Year 1996 are the award to Ford Motor Co. of a $162 million contract for more than 8,800 minivans and four-wheel drive cargo vans and

awards to IBM and NCR for $216 million in point-of-sale retail equipment. This equipment will replace the integrated retail terminals currently used throughout the country. Two design and construction purchases are of particular note: design/build contracts were awarded for processing and distribution plants in El Paso, TX, and the Quad Cities, IL/IA. The El Paso purchase was valued at $15.6 million and the Quad Cities at $13.7 million.

For mail transportation, more than $1.5 billion was spent on highway transportation. More than $1.2 billion was spent for air transportation, including more than $101 million dedicated to moving Priority Mail during the Christmas season. Rail transportation expenditures added up to $254 million during Fiscal Year 1996, and $15.5 million was spent to expand the Indianapolis hub to include a regional hub-and-spoke sorting and trucking operation.

i. **Supplier Diversity.** The Postal Service has long been a leader in providing opportunities to small and minority- and women-owned businesses. During Fiscal Year 1996, Purchasing and Material worked with Diversity Development to take important steps to continue this record of success and strengthen its commitment to these segments of the American supplier community.

As stated above, the new purchasing policy makes contracting officers specifically responsible for managing supplier diversity as a strategic business initiative vital to the success of the Postal Service. Purchasing and Material's Strategic Plan similarly highlights promoting supplier diversity as one of the organization's major objectives. A Postal Service "Supplier Support" Internet

page was also established, containing valuable information (including information sources and selected purchasing opportunities) for suppliers. The Supplier Support page provides better access and instantaneous information to the supplier community.

The Postal Service's commitment to diverse suppliers continues to get results. In Fiscal Year 1996, 65.6 percent of contractual actions (representing more than $2.7 billion) went to small businesses. More than $266 million (representing 8.9 percent of actions) went to minority-owned businesses, and more than $324 million (12.8 percent of actions) went to women-owned businesses.

During Fiscal Year 1996, as part of their continuous effort to build relationships with suppliers and customers, the Diversity Development, Purchasing and Materials, and Facilities organizational units developed and provided informative forums to educate suppliers and exchange ideas to further improve the supplier diversity program. To assist suppliers in their efforts to obtain funding, Diversity Development produced and placed on the Internet Publication 37, "How to Find Financing for Your Business." This publication, developed from a popular and successful workshop, assists start-up businesses and expanding companies by providing valuable information and references on how to obtain financing.

The "Supplier Support" web page, mentioned above, is available in both English and Spanish versions. It features such helpful information as electronic versions of Publication 5, "Let's Do Business," a guide to suppliers on how to conduct business with the Postal Service; Publication 41, "Procurement Manual," the USPS publication

that contains purchasing policies and procedures; a partial listing of purchasing opportunities; and the Quality Supplier Awards Program, a program that provides contractors with incentives to improve their work quality and efficiency. This Internet page is a state-of-the-art tool that allows the Postal Service to expand its outreach to a broader audience, to leverage resources, and to provide prospective contractors instantaneous access to information.

As part of the outreach efforts to the business community to provide information on postal products and on conducting business with the Postal Service, the Marketing, Diversity Development, and Purchasing and Materials organizational units designed a significantly upgraded one-stop informational exhibit display.

j. **National Diversity Awards Program.** The business environment has become increasingly competitive and diverse, as evident in a rapidly changing demographics, attitudes, and economics. By the year 2000, the only competitive businesses will be those with products and services designed for globally diverse markets. To meet these challenges, it is imperative that the Postal Service work as a team to increase the market share and deliver services across an array of cultures. To that end, Diversity Development is continuing to conduct strategic activities to adapt the Postal Service's internal business environment to the diverse needs of its external environment.

This year Diversity Development, with input from the Headquarters Diversity staff, field specialists, and diversity advisory councils, developed a Headquarters-

administered program to reward employees and managers who have taken a lead role through their demonstration, support, and excellence in diversity initiatives. On August 30, at the close of its annual Skills Building Conference in Dallas, TX, Diversity Development held the first Annual National Diversity Awards Ceremony to honor those individuals who worked diligently in Fiscal Year 1996 and throughout their postal careers to support and advance diversity programs and initiatives.

This awards program enabled Diversity Development to recognize outstanding diversity initiatives among three groups of employees. As a criterion for the published nominations, the awards program was modeled after the Human Resources design and was coordinated with Human Resources personnel on the process and procedures used for the program.

Recognizing and valuing diversity is a business requirement and key to enabling our core processes to attain *CustomerPerfect!* goals. Rewarding postal employees and managers for their support of and accountability to diversity initiatives will help the Postal Service become a more inclusive, versatile, and productive organization.

chapter two

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A. Public Perceptions, Customer Outreach, and Mailer Liaison

1. Customer Feedback Analysis

The Consumer Service Card Program provides customers an opportunity to register complaints or compliments about services, policies, and personnel. It also allows the Postal Service to identify problem areas and significant trends for management action.

The Postal Service logged 540,111 customer contacts during Fiscal Year 1996, a 12-percent decrease from the previous year. Of these, 87 percent were complaints, 7 percent were compliments, 4 percent were information requests, and 2 percent were suggestions from customers.

The decrease in customer contacts occurred across all ten Postal Service areas at a time when on-time overnight delivery and customer satisfaction scores were on the increase.

2. Customer Outreach and Mailer Liaison

a. Consumer Programs. The Postal Answer Line's (PAL) eighty-one nationally fielded systems were disconnected between July and September 1996. Customer calls that were previously handled by PAL are now being processed by National Learning Center technology and agents in Tampa, FL, and Phoenix, AZ.

In the service improvement area, the number of Customer Advisory Councils continues to grow. These councils provide an open forum for individual customers to regularly discuss issues with postal managers and suggest ways to improve service. Currently, there are 1,922

active councils nationwide, an increase of 144 over same period last year (SPLY).

b. Customer Outreach. The Postal Service continued its strong cooperation with customer groups in 1996. The Mailers' Technical Advisory Committee (MTAC) meetings provided technical information, advice, and recommendations to the Postal Service concerning various aspects of the mail and the mailing industry. Through MTAC, the Postal Service provided timely, comprehensive communications on postal matters; used the mailing industry as a resource on postal-related issues; and developed action plans that respond to mailing industry issues and concerns. Several major issues and events affecting the Postal Service were supported by MTAC, including planning for the fall and holiday mailing seasons and implementing Classification Reform.

National Postal Forums (NPFs) were held in Anaheim, CA, and Washington, DC, in 1996, attracting more than 14,000 customers and exhibitors. The world's most powerful and effective means of communication, the mail, was the focus of these forums. Attendees were given the opportunity to learn new business strategies and communication techniques that can have significant impact on the competitiveness and financial success of their companies. Several sessions were held on the implementation of Classification Reform. Other specific topics included management and productivity; expedited mail services; federal, state, and local government; international mail services; and postal policy.

A National Postal Customer Council (PCC) Day, sponsored by the NPF, was held March 22 in Dallas, TX.

The event was broadcast live via satellite to PCCs across the country with 900 people in attendance at the Dallas site and approximately 18,000 PCC members and Postal Service employees in attendance across the country. Classification implementation was discussed. The 1997 National PCC Day is scheduled for March 20.

There are approximately 330 PCCs nationwide, with a total membership of approximately 300,000 people. PCCs typically meet every other month to educate members about using the mails more effectively. It is estimated that PCCs hold over 2,300 customer meetings each year.

The Postal Service, in a concerted effort to tap into new sources of revenue, brought a sales presence to mailing industry trade shows and to the NPFs in Anaheim, CA, and Washington, DC. The Partnering for Profits/ Smart Solutions Sales Team, a small group of the best account representatives in the country, was assembled to develop a trade show sales plan. This plan included making top-notch sales presentations, conducting private consultation sessions, and providing customers with professionally prepared sales proposals. The Partnering for Profits/Smart Solutions Sales Team wrote qualified proposals amounting to over $100 million and closed approximately $4 million in new business on site.

The Postal Service's business partnership with state and local government agencies has enjoyed tremendous success this past year, generating significant new revenues. Account representatives have used a multifunctional team approach focusing on creative uses of mail to help agencies achieve their respective missions through better service and less cost.

During 1996 the Postal Service identified and used testimonial success stories of government agencies that have shown innovation themselves and that are willing to provide a model for others to follow. Focus during the year has been on voting by mail and tourism. The first area is driven by the National Voter Registration Act (the "Motor Voter" law) that requires states to register voters at agency offices and through the mail, and the second area is driven by the need to build revenues for schools and other services without raising the burden on taxpayers. New opportunities arose during the year in the areas of mailroom consolidation and constituency communication, and it has become apparent that the Postal Service can provide significant benefit here as well.

It is evident that the Postal Service program to serve state and local government agencies is working well. During this past year various sales support materials in the form of case histories, brochures, videos, educational kits, etc., have all been provided, along with sales training to enable our Account Representative Team to perform at the high professional level which is expected. Efforts to expand this initiative in the coming year will be made to further serve this important customer group.

An effort is under way to strengthen our business relationship with the college/university industry. Their presence has been increased at the MTAC meetings and on various task forces and Classification Reform Implementation Readiness Teams. A barcoding/automation/sales study is being finalized; a mail-flow/return-on-investment diskette is being developed; a sales guide is being created; and their NPF presence is being enhanced.

The Dialogue Marketing Program is a relationship marketing program that uses and promotes the mail as a strategic vehicle for communication with customers. In Fiscal Year 1996 we focused on building relationships with accounts that do not have Account Representatives. Each mailing provided the customer a vehicle to respond to the USPS, allowing a dialogue to take place. We had an overall response rate of 10.6 percent. Building upon this success, we have extended this strategy to our National accounts. Although the specific details vary according to customer revenue level, the Dialogue Marketing programs share one common goal: to reinforce the unique value of mail as a form of business communication.

To develop customer-focused business plans and to position the Postal Service as a responsive communications supplier, we established a new sales group in 1996: Industry Management. The objective was to build the business growth plans around key market segments. We selected the Financial Service, Retail, Mail Order, and Consumer Manufacturing industries as the initial industries. We developed an in-depth understanding of the business processes of our customers in these industries, the corporate and functional needs of our customers, and the communication and distribution objectives of the customers. We then identified how our services can be used to meet their needs. This has led to the development of business growth plans designed to increase the performance of the Postal Service in meeting our customers' needs and to increase the revenues earned from the customers in these targeted industries.

In February 1996, National Account Managers (NAMs) improved their sales decision-making skills

through the use of a sales computer simulation program. The NAMs were presented with simulated case histories, pertinent company data, and a dossier on all of the company contacts. They were faced with situations and problems to solve using a team approach.

New PowerSell software, formerly known as Partnering for Profits, is currently being released to the field sales force. The program was designed for the field sales force by the field sales force. This new software will improve the quality of proposals that are given to our customers and will provide them with complete financial analysis. All of the field account representatives, NAMs, sales support managers, district sales managers, and international sales specialists will be trained on this process through a nationwide implementation program. This training will include three seminars devoted to sales, including proposal writing skills, opportunity analysis, and software classes. Follow-up on the success of this program will be coordinated by Premier accounts through the area offices.

Sales teamed with Operations Support to manage the Postal Operations Center, which was instrumental in the Postal Service's success during the fall and holiday mailing season. Sales acquired volume and distribution plans from major customers and maintained daily contact with these customers to ensure that the Postal Service was meeting their mailing needs.

The Managed Account Plan, a Business Customer Service Process based on quality principles, uses cross-functional customer support teams to address the service needs of premier and major customers. This process

enables the Postal Service to track, analyze, and measure performance through customer feedback to be more effective at meeting and exceeding customer's expectations. The Managed Account Plan – currently known as the Business Service Network (BSN), but to be renamed at a later date – will enable account representatives to better understand the business needs of the largest customers and to find new ways to help them grow their business using postal products and services. Additionally, this process will keep postal operations informed of customer concerns and issues in order to identify and resolve operational processes that hinder world-class service to our business customers.

Initiatives designed to enhance customer service for major mailers in Washington, DC, Baltimore, MD, and Northern Virginia have been implemented to improve performance of customer service and sales personnel. Implementation of these initiatives is part of an ongoing pilot test. The initiatives integrate implementation of the BSN, use of the Postal Operations Center with Sales organization account segmentation, account analysis, account planning, and consultative sales training initiatives. By approaching account management systematically, information to enable solution of routine service issues will be available to management. Standards of performance for sales and customer service personnel have been established to improve account coverage.

A market-test Conference Mailback Service was initiated. If it proves successful, attendees at many conferences will be given a special box at registration in which they can mail materials home. The containers, clearly

marked Priority Mail for mailing purposes, would be sent for a flat rate.

Plans are under way to sell bulk packs of both Priority Mail and Express Mail flat-rate envelopes through telephone credit card purchases as a standard item through our fulfillment center. Priority Mail would be sold in ten-packs and Express Mail in five-packs for the price of postage. Also, three new standard packages for Priority Mail were introduced to customers in 1996. The packages are a video box, a medium box, and a tube. Shippers with more than $1 million in revenue can customize their Priority Mail packages (i.e., they can have their company logo and design on the packages).

The Postal Service has begun testing an exciting new service: Priority Mail Delivery Confirmation. Initial test customers are large-volume Priority Mail users. These shippers will identify each Priority Mail package or flat with a special barcoded Priority Mail Delivery Confirmation Label. The shippers can electronically access a database file that shows the date of delivery of each of their tracked mailpieces. By late 1997, the service will be available to business and residential customers who mail at our retail counters.

In April 1995, a team of call-management industry experts was assembled to advise the Postal Service on how to create national call centers to provide the American public with a single corporate point of contact for conducting business by phone with the Postal Service. The key components of this initiative include establishing (1) a network of National Service Centers (NSCs) (call centers) that will be available 24 hours a day, seven days

a week and (2) linkages to the field, particularly post offices, to provide services requested. Two Learning Centers have already been established in Phoenix, AZ, and Tampa, FL. These learning sites have allowed us to fine-tune the call center concept for the Postal Service. These Learning Centers are currently serving the following metropolitan areas: Phoenix, AZ; Tucson, AZ; Portland, OR; Las Vegas, NV; Tampa, FL; and Atlanta, GA.

The Postal Service plans to have six NSCs in place to serve the entire nation. Denver, CO, has been selected and approved by the Board of Governors as the first of six additional NSCs planned and is scheduled to open in December. The Denver site will serve a number of areas including all or part of the following states: Alaska, California, Hawaii, Nevada, Oregon, and Washington. The Postal Service will seek funding approval for the next five NSCs from the Board of Governors. When implemented nationally, Corporate Call Management will offer customers a single point of contact for all services. It enables customers to speak with trained customer service personnel to obtain telephone assistance on such routine questions as ZIP Code information, postage rates, post office locations, and window service hours; customers can also use the NSC to report a service problem.

An OPEX Magnetic Detection Sorter has been installed in Mail Recovery Centers (MRCs) located in Atlanta, St. Paul, and San Francisco. This system automates the process of recovering, identifying, and returning undeliverable or damaged mail to customers. It has increased productivity at the MRCs and has improved customer service by finding valuable contents of otherwise dead mail.

c. Sponsorships

(1) Tournament of Roses Parade. The Postal Service entered a float in the 1996 Tournament of Roses Parade. Research indicated that the primary objectives were largely met: enhancing USPS image, building employee pride, and bringing in new revenue. More than 400 million viewers worldwide watched as our float won the "Fantasy Trophy." In addition to the float entry, the Postal Service operated the anchor booth at Family Fest, a three-day event at which Tournament licensees and ethnic food vendors merchandised their wares to approximately 75,000 visitors. We also partnered with a Kodak franchisee in an on-site computerized operation that produced instant personalized photos on replicas of the float on a 32-cent stamp, postcards, and calendars. An estimated 1,600 employees participated in the float-decorating and sales activities.

On January 1, 1997, the Postal Service will again be represented by a magnificent float entitled, "The Eagle Has Landed: We Deliver Moments." This is in keeping with this year's theme of "Life's Shining Moments." In addition, a rose stamp will be reissued in late October, and we will produce special philatelic items for sale at Family Fest. A nationwide contest for employees will be conducted to increase awareness and employee participation.

(2) Cycling. Professional cycling enjoys tremendous popularity worldwide, with over 100 hours of live television coverage and 50 million spectators annually. The Tour de France, cycling's greatest event, is the world's third-largest sporting event, with over 20 million

spectators and television coverage in 120 countries. In the United States, professional cycling has seen a tremendous growth in popularity over the past 10 years, with significant corporate involvement and over 4 million spectators annually. American Greg LeMond's three Tour de France victories have contributed to the dramatic increase in the awareness and appreciation of the sport in the United States.

Professional cycling has a clear, synergistic fit with the U.S. Postal Service. Both are associated with speed, teamwork, and point-to-point delivery. Furthermore, USPS can leverage cycling's image of being high-tech and global.

USPS' specific objectives for the cycling sponsorship program include the following:

- Increase revenue and sales of USPS products on a global basis and increase the business throughout the world (especially Global Delivery Services and stamp collectibles).

- Receive significant exposure as a innovative global marketer.

- Enhance the USPS image in local communities and among employees.

(d) Market Research and Analysis. Market Research and Analysis is a full-service internal consulting resource for the Postal Service, providing research and analytical services to postal management. The Market Research and Analysis unit is organized to provide internal clients specialized expertise in each of the Postal Service's key markets: Bills, Statements, and Payments;

Communications; Publications; Advertising; Package Delivery; and Retail. The staff is assigned to work with specific business areas on a long-term basis, building expertise in market trends, competitive analysis, and customer needs.

In Fiscal year 1996, the Postal Service implemented the *CustomerPerfect!* Process, which increased the importance of competitor, customer, and market information to the Postal Service. As a result, strategic research was increased. The focus has been on improving the integration, analysis, and dissemination of this information throughout the organization. Much of the information has been summarized in the Business Environment Assessment and has been used to support the strategic planning process of the Postal Service.

This has resulted in increased coordination among the various "owners" of relevant information systems, such as Finance, Marketing Systems, Sales, Consumer Affairs, and Operations in establishing a more coherent description of the Voice of the Customer in each of the major markets. Market Research has also supported the development of new products and services and has developed systems that track the effectiveness of various marketing programs.

e. Customer Service/Support for Bulk Mail Entry

(1) Centralized Automated Payment System (CAPS). The centralized system was expanded to accommodate all national mailers wanting to pay centrally for mailings entered at multiple entry sites. In addition, centralized debiting was introduced, eliminating the need for

customers to position postage funds with the Postal Service in advance of entering a mailing. Through this payment option, an Automated Clearinghouse debit is sent by the Postal Service to our customer's bank account to effect a deduction from that account the day after the mailing. The combined centralized trust and centralized debit options are now referred to as CAPS.

(2) Electronic Interfaces with Business Customers. Significant progress was made on our comprehensive Direct Link project, aimed at building interactive exchanges of information and payment with our business customers. We collaborated with representative members of the mailing industry to develop and implement electronic standards for submitting detailed mailing information and new business processes that capitalize on this electronic data to streamline mail verification and acceptance. This new capability will allow us to eliminate large quantities of hard-copy reports and provide electronic updates on the status of mailings entering the mailstream to both postal facilities and our customers. The Internet is a key component of our Direct Link effort, supporting the transfer of electronic files to and from customers, access to information about their mailings and their postage accounts, and access to software that supports their preparation of postage statements. By the close of Fiscal Year 1997, we will be in full production with our Direct Link program for all classes of mail.

(3) Customer One System. Customer One System (COS) is a common customer database that includes over 12 million businesses that either use the Postal Service presently or are potential Postal Service customers. Through COS, the sales force has instant online access to

complete customer account profile information. COS can be used as a database marketing tool to target existing or potential customers by industry or by product. During 1996 COS deployment to all district offices, including Headquarters and area offices, was completed. COS is the automated tool that supports the Sales organization in its mission to increase revenue and provide our customers with quality services.

Each district database contains all customers located within that district and allows access to all customers nationwide through queries to the national database. Volume and revenue updates to the Corporate Business Customer Information System have been downloaded to the national database and distributed to each of the district databases. Local updates – including business contacts, sales, and service activity – are transferred to the host server to facilitate the sharing of information and to enable true team selling. COS is available to field users through a local area network workstation or through the sales force laptops. New development is currently under way to improve the sales tracking and planning functions in COS.

f. New Programs

(1) Tracking System Development. To meet customer needs for information about their time-definite shipments, the Board of Governors approved a tracking testing program. Through this effort, the Postal Service successfully migrated the core tracking infrastructure from contractor to postal management. This included the tracking database, communications infrastructure, call center, and systems integration activities. A passive en

route tracking system for parcels was installed in the Bulk Mail Centers. At test locations, carriers used scanners to transmit near-real time tracking information from their routes. New customer communications options, the Internet and electronic file transfer, have been implemented. Board of Governors approval for funding of scanning devices that allow carriers to capture delivery confirmation information on the route will be sought.

(2) Corporate Call Management. The Corporate Call Management initiative is a comprehensive program that will centralize and integrate customer service telephone capability across the nation. This past year, two pilots sites called Learning Centers have been established in Tampa and Phoenix. These sites provide national support for customer inquiries about the delivery status of their Express Mail packages and regional support for other information and services. Experience in these Learning Centers has reaffirmed the initial decision to embark upon this program and to refine the initial designs and supporting business processes for Postal Services available to the American public by telephone. These will be incorporated into the new Denver NSC, scheduled to open in late 1996. The Denver NSC will support customer-initiated telephone contact for California, Alaska, Hawaii, Washington, Oregon, and Nevada. It is the first of six such centers necessary to provide national coverage. The Denver NSC will service 17 percent of the nation and will take a projected 39 million calls annually.

3. Advertising

In Fiscal Year 1996, the Postal Service expanded its broad communications with customers through a variety of advertising media. The Postal Service continued use of four advertising agencies in 1996 – Young and Rubicam, FCB, Frankel and Co., and Lee Hill, Inc. – to diversify and strengthen creative executions for a wider variety of product and service advertising. Each of these agencies brings a unique set of capabilities to meet an increasingly diverse marketing plan that includes established products, retail services, and new products.

Several major programs highlighted the 1996 advertising and promotion activity. One of the most visible and successful programs is the Priority Mail program, which used a clever touch of light humor in comparing Priority Mail to our competitor's 2-day products. The spots, referred to as the "$8, $6, $3" campaign, resulted in a 16-percent increase of the Priority Mail business over the prior year, when the product was at an all-time low growth level.

The FY 1996 Holiday Program was also successful, with an increased focus on various ethnic market segments. Philatelic marketing and licensing continued to expand. The advertising to create new awareness and traffic in the test markets for the new Postal Store concept was launched in 1996. Additional advertising support was also provided for other established products, such as Global Services and Advertising Mail.

A. Ethnic Marketing Opportunities

Multicultural Marketing. Recognizing the growing diversity of the United States and the large economic buying power of ethnic market segments, the Marketing Department initiated a multicultural marketing program to study how the Postal Service could better meet its corporate goals by developing customized marketing programs to businesses and households in high-density ethnic communities.

The program was formally started in May with a national Multicultural Marketing Conference, cosponsored by Diversity Development and Marketing. This event brought together experts from a wide range of disciplines in the area of ethnic marketing. Speakers addressed the topics of business strategy, research, product development, and advertising. In-depth case studies from the private sector and Postal Service were presented to provide relevant and recent examples of successful efforts to target products and services to one or more ethnic market segments.

The Marketing Department then conducted an aggressive market research effort, gathering data on the demographics of ethnic households and businesses, exploring their perceptions of the USPS, and identifying specific product opportunities.

Based on these initial research efforts, some specific product opportunities were identified and targeted by Marketing product managers. These activities included the following:

- Introducing – on a trial basis – a new money-by-wire product, Dinero Seguro, for transferring money to Mexico from eighty U.S. post offices in Texas and California;

- Testing Postal Money Order advertising in high-density ethnic markets; and

- Advertising stamps and Priority Mail products in ethnic periodicals.

Research findings also indicated that recent immigrants sometimes encounter language barriers when doing business with the Postal Service. In Fiscal Year 1996, efforts to overcome these language difficulties included creating information posters and counter cards in Spanish and placing them in post offices that serve large numbers of Hispanic customers.

Finally, advertising agencies specializing in ethnic markets were instrumental in assisting with research and in identifying strategic opportunities with the various ethnic markets. These agencies also supported product advertising campaigns and organizational sponsorships that were sought specifically to communicate more directly and effectively with ethnic consumers and minority-owned businesses.

4. Stamp Services

a. Stamp Program. In Fiscal Year 1996, the Postal Service continued its development of a more diverse and balanced stamp program. Major stamp subject and design initiatives included the launch of a minisheet of stamps based on photographs of endangered species, which

served as a cornerstone for beginning a new appeal to the youth market. Other trend-setting stamps include a commemoration of Hanukkah, which kicked off our Holiday Celebrations collection. The stamp program is creating awareness in many markets as it becomes more relevant and reflective of the interests of our customers.

b. Self-Adhesive Stamps. Throughout Fiscal Year 1996 and continuing into Fiscal Year 1997, the volume, number of issues and designs, and format of self-adhesive stamps were increased. By the end of Fiscal Year 1996, over 60 percent of our stamp program was self-adhesive. With increased production capacity, we now have the ability to produce 100 percent of the stamp program in self-adhesive form. As we continue listening to our customers and monitoring the stamps' use, we will become better equipped to determine where additional self-adhesive production is needed and respond accordingly. We will maintain a production mix of gummed and self-adhesive formats to meet the needs of our customers and to provide an attractive assortment of stamps. By developing new and innovative product lines, consistently monitoring performance standards, and calling for lower prices, we are increasing supplier competition. We are also continuing to enhance quality control at all supplier plants.

c. National Postal Museum. The Postal Service supports the National Postal Museum's mission of increasing the awareness and understanding of America's postal history and international philately. We continue acting as liaison, coordinating and overseeing activities and financial processes associated with the agreement consummated between the Smithsonian/National Postal

Museum and the USPS. In response to a recent Inspection Service audit, a contracting officer has been designated to augment financial administration. The possibility of a one-time endowment to replace the USPS annual contribution is also being studied. This method of continued support will ensure long-range financial stability for the museum while reducing the Postal Service's total financial contribution.

d. Direct Marketing. In Fiscal Year 1996, the direct marketing of stamps and stamp products began an evolutionary process that will continue through Fiscal Year 1997. It includes more catalogs, more direct mail promotional pieces, more relationship-building communications, better market segmentation, and improved database marketing. A new catalog, "USA Philatelic," was introduced to serve as the basic mail-order catalog for stamps and products for the majority of our philatelic customers. The other catalog, "Stamps, Etc.," has been modified to serve as an outreach device for new and potential customers. The contents now focus on products, with an emphasis on collectibles and gifts.

e. Youth Program. Following extensive focus group studies and pilot testing in select markets, the Stampers Youth Program was rolled out nationally in mid-October. The Stampers Program is aimed at children 8 to 12 years of age and is designed to make the hobby of stamp collecting fun and interesting for both young people and their parents. Print advertising, direct mail, posters for display in 40,000 post offices, and television advertising were the primary vehicles used to introduce the program to the public. As part of the program, the Postal Service, through its partnership with Warner Bros., has appointed

Bugs Bunny as our official "ambassador" for the Stampers Program. By broadening the appeal of stamp collecting through the Stampers Youth Program, we believe we can rekindle the interest of all generations in this exciting and educational hobby. In the first two weeks of the roll-out, the Postal Service received approximately 221,000 new requests.

f. **Celebrate the Century.** In September 1997, the Postal Service will issue a sheet of fifteen stamps commemorating the first decade of the 20th century. As part of this program, the USPS will issue a sheet of fifteen stamps commemorating each decade through 1999. Stamp subjects for the first 50 years will be selected by the Citizen's Stamp Advisory Committee. Stamps representing the second half of the century, up to and including the 1990s, will be selected by the American people through a nationwide balloting process. By involving the American people in selecting images of their era to commemorate the century we hope to enhance the hobby of stamp collecting and to increase the retention of commemorative stamps.

g. **Looney Tunes.** Beginning with the issuance of our Bugs Bunny stamp, currently scheduled for release in April 1997, the Postal Service and Warner Bros. are embarking on a relationship that, over the next four years, allows us the exclusive royalty-free rights to issue stamps representing Looney Tunes characters. We view the characters as the catalyst that will re-engage kids in the hobby of stamp collecting.

h. **International Sales Program and Stamp Exhibitions.** The U.S. Postal Service has created markets for U.S.

stamps and philatelic products in foreign countries through an International Marketing and Sales program that strives to expand the base of collectors of U.S. stamps. The program consists of contractually established Postal Service sales representatives in foreign countries who market stamps, stationery, and philatelic products to customers within established sales territories.

In the past few years, stamp dealers have closed many of their retail stores and now depend on stamp shows to reach customers. As a result, stamp shows have become a primary method of reaching customers. Collectors have become attuned to such exhibitions as a method of obtaining items for their collections. The Postal Service must be actively involved in stamp shows to reach customers directly and to introduce the hobby to potential new collectors.

Through our international program and participation in international and domestic stamp exhibitions, we generated approximately $6 million dollars of revenue in Fiscal Year 1996.

B. Mail Volume and Service Performance

1. Mail Volume

In 1996, total mail volume increased by 1.9 billion pieces, or 1.1 percent, to 182.7 billion pieces in the fiscal year. First-Class Mail was responsible for most of this increase; it grew by 980 million pieces, or 1.0 percent.

In Fiscal Year 1996, Priority Mail accounted for more than 6 percent of Postal Service revenue from mail services. Priority Mail volume increased 10.4 percent to

959.4 million pieces. Domestic Express Mail volume increased 1.5 percent to 57.6 million pieces in Fiscal Year 1996; revenue increased 3.6 percent to $737 million.

Periodical Mail (formerly second class) decreased by 0.7 percent, to a volume of 10.1 billion pieces; Periodical Mail revenue increased slightly to $2.0 billion.

Total Standard A Mail (formerly third class) grew by 1.1 percent. Standard A Enhanced Carrier Mail decreased by 1.8 percent, and Standard A Nonprofit Mail decreased by 10 million pieces.

Standard B Mail (formerly fourth class) showed a 2.5-percent increase in volume. Mail volume for Standard B Parcel Post stayed approximately the same as last year. Revenue for Standard B Mail was approximately $1.5 billion.

Total First-Class Mail is projected to grow by about 2.5 percent in Fiscal Year 1997, to just under 100 billion pieces. A new subclass of First-Class Mail, Automation and Retail Presort, is expected to grow by over 9 percent in Fiscal Year 1997, as compared with similar mail types in Fiscal Year 1996. Growth in the Priority Mail category is also expected to remain strong, growing to over a billion pieces in Fiscal Year 1997 – more than a 6-percent increase over Fiscal Year 1996.

Standard Mail (formerly third and fourth class mail) is also expected to grow in Fiscal Year 1997. Standard A is expected to grow by 4.9 percent, and Standard B is expected to grow by 8.6 percent. This strong growth should continue into Fiscal Year 1998, with projected growth rates of 4.6 and 6.0 percent, respectively. (See Table 2.1)

Table 2.1
Historical and Projected Mail Volume by Fiscal Year
(thousands of pieces)

	*1995**	*1996**	*Projected 1997*	*Projected 1998*
First-Class Mail, total	96,295,900	97,275,954	99,664,808	102,003,706
% change	1.0	1.0	2.5	2.3
Automation and Retail Presort	38,348,091	38,766,002	42,289,696	43,708,650
% change	2.9	1.1	9.1	3.4
Priority	868,979	959,424	1,019,870	1,073,621
% change	12.9	10.4	6.3	5.3
Express Mail	56,690	57,573	61,876	65,970
% change	0.9	1.6	7.5	6.6
Mailgrams	4,493	4,204	3,100	2,723
% change	(15.7)	(6.4)	(26.3)	(12.2)
Periodical Mail, total	10,194,235	10,126,194	10,351,471	10,520,352
% change	(0.3)	(0.7)	2.2	1.6
Nonprofit Periodical Mail	2,282,541	2,205,180	2,256,941	2,301,613
% change	0.6	(3.4)	2.3	2.0
Standard A, total	71,112,094	71,859,250	75,377,395	78,822,189
% change	2.4	1.1	4.9	4.6
Standard A Enhanced Carrier Route	29,725,688	29,204,513	31,452,062	33,110,195
% change	(0.3)	(1.8)	7.7	5.3
Standard A Nonprofit	12,265,675	12,255,065	12,569,237	12,939,066
% change	3.1	(0.1)	2.6	2.9
Standard B, total	936,192	959,689	1,042,194	1,104,400
% change	7.4	2.5	8.6	6.0
Standard B Parcel Post	218,060	217,727	227,542	229,343
% change	(2.8)	(0.2)	4.5	0.8
Standard B Bound Printed Matter	470,872	516,970	571,658	623,930
% change	12.1	9.8	10.6	9.1
Standard B Special Rate	217,761	194,113	209,126	214,349
% change	13.9	(10.9)	7.7	2.5
Standard B Library Rate	29,500	30,880	33,867	36,779
% change	(17.7)	4.7	9.7	8.6
Postal Penalty Mail	412,281	368,579	332,789	315,714
% change	(8.2)	(10.6)	(9.7)	(5.1)

* The mail categories indicated are the categories which resulted from reclassification (MC-95-1 which became effective July 1, 1996).

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2. Service Performance Measurement

First-Class Mail service performance results are measured through the External First-Class measurement system (EXFC). This system measures service performance from the time mail is entered into the system at a collection box or office building mail chute until the time it is received in the home or small business. The EXFC measurement system, independently run by the accounting firm of Price Waterhouse, provides quarterly estimates of First-Class Mail destination service performance for ninety-six cities from their overnight, two-day, and three-day service commitment areas. The independent EXFC measurement system showed an average national overnight performance of 89 percent for Fiscal Year 1996. National service performance for two-day service commitment areas averaged 79 percent, while three-day performance averaged 80 percent. Table 2.2 shows the performance for each quarter of Fiscal Year 1996.

Measuring customer satisfaction is an ever-evolving process. In the past year, we have made significant enhancements to the process, making it more reliable and less subject to reacting to media events. Similar changes are planned for measuring business customer satisfaction. Customer satisfaction measurement (CSM) is composed of two distinct processes, one that measures residential satisfaction (CSM-R, formerly CSI) and one that measures business customer satisfaction (CSM-B, formerly BCSI).

CSM-R is significantly different from the original system. There is now a weekly mailing of surveys, rather than only a quarterly mailing. Instead of asking respondents to rate their service over a 90-day period, we now

Table 2.2
National Service Performance: Fiscal Year 1996

	1st Quarter Performance (%)	*2nd Quarter Performance (%)*	*3rd Quarter Performance (%)*	*4th Quarter Performance (%)*	*Fiscal Year Performance (%)*
Overnight	87.76	87.31	90.41	91.21	89.25
2-day	79.49	75.54	80.04	80.25	78.82
3-day	82.24	70.93	82.44	82.82	79.52

ask for a 30-day evaluation. Thus, reports are provided for an accounting period, not on a quarterly basis. Other changes involve the rating scale, the positioning of the overall satisfaction question (no longer at the beginning of the survey), and the addition of more detailed diagnostic questions.

The CSM-R results showed that 92 percent of the nation's households rated their overall satisfaction with the Postal Service as "excellent," "very good," or "good" at the end of the fiscal year. For the same period, 70 percent of households rated the Postal Service as "excellent" or "very good."

The Business Customer Satisfaction Index is now known as the Customer Satisfaction Measurement-Business (CSM-B) system. It is still a quarterly measurement system and measures satisfaction of business customers, including National, Premier, and Business accounts.

National accounts reported an overall satisfaction rating of 92 percent, an increase of 1 percent over the same period last year. These business customers have been identified as our largest customers. Collectively, they contribute an estimated $12.5 billion toward the total annual USPS revenue. Approximately 200 accounts are designated as National accounts.

The overall satisfaction rating of Premier accounts declined 5 percent from last year, to 85 percent. These are the second-largest business customers. Collectively, Premier accounts contribute an estimated $14 billion toward the total annual USPS revenue. There are about 2,600 Premier accounts.

Business accounts reported an overall satisfaction rating of 88 percent, an increase of 5 percent over last year. Business accounts are all other business customers not identified as National or Premier accounts. Collectively, this category contributes an estimated $17.5 billion toward the total annual USPS revenue. There are over 8 million Business accounts.

Priority Mail consists of First-Class Mail weighing more than 11 ounces and, at the option of the mailer, weighing 11 or fewer ounces. Priority Mail is intended to provide delivery within two days between major markets and three days everywhere else. For Fiscal Year 1996, 81 percent of Priority Mail was delivered within two days and 94 percent was delivered within three days.

For Fiscal Year 1996, Express Mail morning performance was 95 percent, afternoon on-time service performance was 92 percent, and total network on-time performance was 94 percent.

3. Programs and Trends

Increasing emphasis is being placed on customer focus, service improvement, product cost containment, and profitability. Merchandise services redesign gained momentum this year and involved all aspects of Postal Service parcel services. This included emphasis on service improvement, the feasibility of parcel delivery confirmation, electronic shipper-paid forwarding through Address Change Service, and increased emphasis on such delivery service options as the carrier release program. Due to the Drop Ship Appointment System (DSAS), communications between the Postal Service and all drop ship

users have continued to improve. DSAS provides more effective transmission at arrival and unload profiles and information to and from Bulk Mail Centers (BMCs). This includes the close-out feature, which provides necessary mailing information to customers 24 hours after they have deposited mail at a BMC or Processing and Distribution Center (P&DC).

a. **Hub-and-Spoke Project Networks.** A review was performed of our surface and air transportation networks to identify areas needing improvement in service standard performance, transportation efficiency, and overall cost-effectiveness. Our analysis indicated that highway contract route vehicle capacity was often underused; conversely, mail was being flown that could be moved via surface transportation and still arrive at destination facilities hours before the Critical Entry Time. Available mail volumes did not always support implementation of truck service from point to point, but by consolidating volumes from several origins, it was possible to create solid loads directed to the destination.

This was the premise behind the Indianapolis hub-and-spoke project (HASP), which was implemented in Indianapolis, IN, on August 17. Although the HASP concept itself has been in existence for several years at the local level, this was the first national effort to be implemented. The Indianapolis HASP is a "break bulk" facility for handling of two- and three-day First-Class Mail, as well as Priority Mail if service commitments can be met. Mail arrives at the hub from thirty-three "spokes" (P&DCs and other facilities participating in the HASP network) in mixed destination containers. The mail is sorted in manual "bull pen" operations, by type and

shape (First-Class letters, First-Class flats and pouches, and Priority Mail) and reloaded onto direct destination transportation. When fully operational, the Indianapolis HASP will handle 3.4 million pounds of mail each week (567,000 pounds per day) that formerly moved via air transportation between the spokes on the network. Currently, 400,000 pounds of First-Class and Priority Mail are traversing the HASP on a daily basis.

Expected results from the Indianapolis HASP include improved service performance between origins and destinations participating in the network; reduced costs resulting from the reduction of long-haul, underused trips and from converting large-volume dispatches from air to surface transportation; and reduced piece handling in the affected plants. Since many of our Airport Mail Centers and Facilities are experiencing problems with insufficient airlift, the HASP provides an additional outlet for managing volume growth. The Indianapolis HASP has created an opportunity to use the Expedited Hub Facility to its optimum level, while increasing economic value potential for the Postal Service.

The Capital Beltway HASP was opened in September, and we are considering additional hubs in Knoxville, TN; Omaha, NE; Dallas, TX; and Orlando, FL. When the network is complete, more than 1 million pounds of mail daily will have been diverted from air to surface transportation. More important, we will have a highly reliable, integrated network that can be used as a marketing tool to generate new revenue. We are creating information systems that will allow us to manage the entire HASP network from Indianapolis.

4. International Mail

The International Business Unit (IBU) was started in 1995 with the vision of becoming during the next few years – and no later than the year 2005 – the leading global supplier of direct marketing and package delivery services and related business transactions to business customers worldwide. All standard services for households and small businesses were continued as well. During 1996, strategic, business, and organization plans have been developed, and staffing was completed. The field sales force in the United States was established. Global Package Link (GPL), previously known as International Package Consignment Service, was established and significantly expanded, with service now available to eight countries. GPL processing sites were added at Dallas, San Francisco, Seattle, Chicago, and Miami. Global Priority Mail (GPM), previously WORLDPOST Letter, was restaged and launched on a nationwide basis to twenty-seven countries. In addition, processes were initiated to provide customer-desired features such as merchandise return and volume pricing. These actions were launched under the Postal Service's *CustomerPerfect!* campaign, a systematic program to achieve business excellence.

Efforts to consolidate international mail exchange offices have been completed and designs for International Service Centers are now being developed to improve overall service and help control future costs. The IBU is also seeking registration and certification under the international quality standard, "ISO 9000."

a. Volume and Revenue. In Fiscal Year 1996, international mail of all types totaled 999 million pieces and

generated $1.61 billion in revenue. Revenue increased from the previous year by 10.2 percent, while volume increased by 8.3 percent. International revenue is primarily derived from airmail, surface mail, Express Mail International Service (EMS), International Surface Airlift (ISAL), and such foreign transactions as terminal dues and fees.

With the formation of the IBU, several new products have been introduced. Two relatively new products have generated good revenue levels: GPL has generated $28 million (with a volume of 1.727 million pieces), and GPM has generated $6 million (with a volume of 835,000 pieces). Airmail constituted 71.4 percent of the total international mail volume and represented 53.4 percent of international revenues. Airmail volume (713 million pieces) increased 9.8 percent over 1995 and airmail revenue ($858 million) increased 8.9 percent over 1995.

In Fiscal Year 1996 surface Letter Class ceased to exist as a separate category of international mail. International surface mail, therefore, fell from 17.4 percent of all international mail in Fiscal Year 1995 to 10.4 percent in Fiscal Year 1996; it generated $196.5 million in revenue in Fiscal Year 1996, down 4.3 percent from 1995.

International Priority Airmail (IPA) and ISAL grew at healthy rates in Fiscal Year 1996. IPA revenue was $35.1 million, up 11.5 percent over 1995; ISAL revenue was $96.8 million, up 25.9 percent.

b. Information Technology. Most of the major postal administrations are involved in the application of electronic data interchange (EDI) to facilitate the movement of international mail and collect the required data

on mail flows. The Postal Service now has a production system exchanging tracking data on EMS with twenty-four other administrations and is testing EDI exchanges covering other mail types in a program involving seventeen other administrations, which represent about half of all international mail volume.

c. Terminal Dues. Terminal dues are the payments made between national postal administrations to cover the costs of handling and delivering international letter mail, printed matter, and small packets. Rates are established by the Universal Postal Union (UPU) and through bilateral agreements. The 21st Universal Postal Congress in Seoul, Korea, adopted a more equitable and market-sensitive terminal dues system that took effect in 1996. This system has a new rate structure based on total mail flows, with a provision to adjust rates according to actual items sent for volumes above 150 metric tons. It further offers a bulk mail option, giving the receiving postal administration the option of charging item-based rates for mail posted in bulk by the same customer. The bulk mail system has a link to domestic rates in the country of destination. The revision mechanism also allows item-based accounting. The new system is expected to reduce the economic incentive for remail.

d. International Postal Agreements and Conferences. In March of 1996, the Postal Union of the Americas, Spain, and Portugal (PUASP) held its annual Consultative and Executive Council (CEC) meeting in Montevideo, Uruguay. The PUASP is a regional postal organization of twenty-seven postal administrations of the Western Hemisphere and Iberian Peninsula. During the CEC, the USPS led working groups on new products

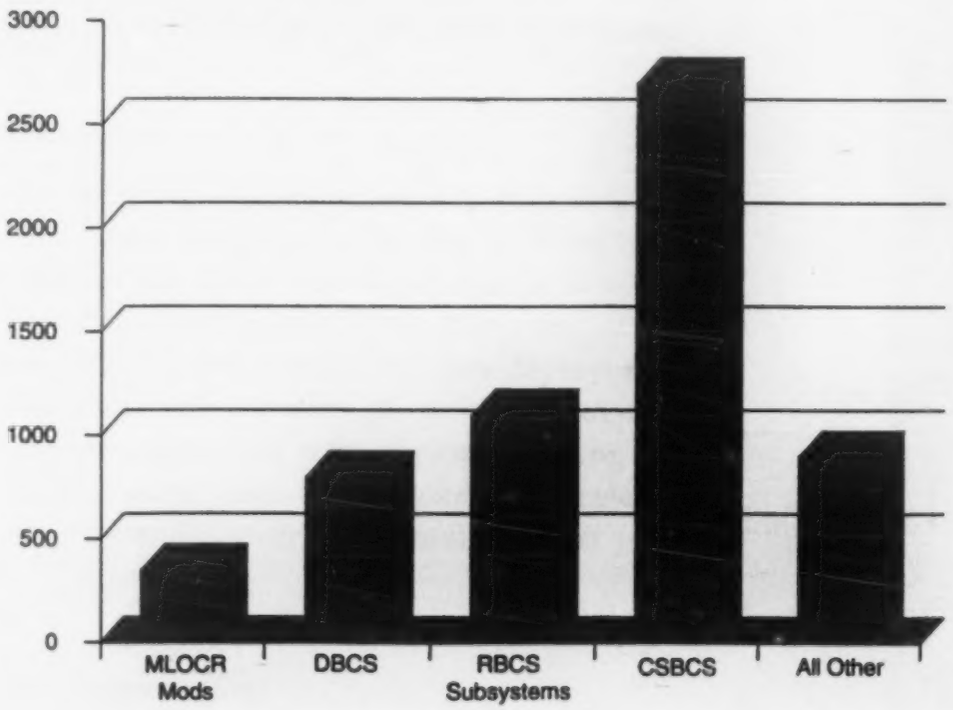
and transportation, restructuring and reform of the PUASP, and postal development.

The Postal Operations Council (POC) of the UPU held its annual meeting in Bern, Switzerland, in April 1996. The USPS continued to play a leading role, chairing important working groups dealing with international direct mail and marketing, EMS, EDI, and terminal dues. The POC adopted several decisions in these technical fields, decisions aimed at making postal administrations more competitive in rapidly evolving international mail markets. At the conclusion of the POC, the USPS chaired a major two-day Conference on Postal Development and Reform, attended by over 100 postal administrations, international banks, and international development organizations.

In October 1996, the UPU's Council of Administration, which focuses on the legal environment in which postal administrations operate, advanced its work in such fields as the concept of the single postal territory, which defines the scope of postal services (and has vast implications for the presence of public and private postal operators in postal markets); postal security; and cooperation between postal administrations and customs authorities.

The UPU also signed an agreement with World Bank officials that created closer cooperation in fostering postal reform and postal development through public and private investment projects. During 1996 the UPU and the World Bank published a major study on worldwide postal reform, "Redirecting Mail: Postal Sector Reform." As part of its management of the UPU's Postal Development

Figure 2.1
FY 1996 Equipment Deployment



Action Group, the USPS played a major role in coordinating the research necessary to complete the study.

e. New Services. Global Direct is a new service for large-volume commercial publication mailers. It offers a utility to enter large volumes into the United States and foreign destinations with domestic postage indicia at reduced rates but improved service. This service is being established to selected foreign countries and should be implemented during 1997. Other new services are under development for release during the 1997-1998 time frame.

C. Mail Distribution

In keeping with our established goal to complete the letter mail automation program by the end of Fiscal Year 1997, the Postal Service made significant strides in accelerating deployment of equipment. Over 40 percent of the Postal Service's automation equipment was deployed in 1996. Approximately 3,500 pieces of major automation and mechanization equipment were deployed during the year, representing more than a 120-percent increase in equipment deployments over the previous four-year period from 1992 to 1995.

1. Letter Mail Automation

a. General. Automation deployments during 1996 included continued deployment and enhancement of our Remote Barcoding System (RBCS) and expansion of the RBCS network, along with a substantial deployment of barcode sorters. These systems, along with other automation equipment, not only significantly increased the

number of barcodes produced, but also allowed barcoded processing of mail to carrier-walk sequence, reducing carrier-in-office time and resulting in improved service in many locations.

Enhancements to the RBCS network included a number of equipment modifications and new deployments. A total of 155 Remote Computer Readers (RCRs) were deployed during 1996. RCR, which allows for off-line computer processing of handwritten addresses and mail not able to be processed through the optical character reader (OCR), was enhanced through the integration of two development changes that had reached production maturity. The first change allowed for RCR partial results to be forwarded to Remote Encoding Centers (RECs), thus reducing the number of keystrokes required to finalize an image or letter. The second modification was the integration of Handwriting Analysis Interpretation software into RCR, a change that began late in Fiscal Year 1996. This modification is expected to further reduce the number of mailpieces requiring remote keying and to reduce the number of keystrokes required to finalize a mailpiece image.

In October 1995 the Postal Service Board of Governors approved capital expenditures for an additional 104 RBCSs; upon completion, the RBCS network will consist of 55 RECs servicing approximately 250 P&DCs. At the end of Fiscal Year 1996, the RBCS network included 53 RECs and 165 P&DCs and produced over 20 billion barcodes on letter mail. Base system RBCS deployments are scheduled to be completed in July 1997.

At the end of Fiscal Year 1996 approximately one half of our fleet of multiline OCRs (MLOCRs) had been modified to increase the number of barcodes in the letter mailstream. These modifications included updating equipment recognition modules, adding a gray scale camera, and incorporating a wide-area barcode reader (WABCR) on the MLOCRs. The first modification involved hardware and software changes to the MLOCR address and interpretation modules, allowing expanded capabilities to identify special characters, to distinguish between upper and lower case letters, and to process characters produced by dot-matrix printers. Improvements in the MLOCR's ability to read addresses on patterned and dark-colored envelopes were accomplished through the addition of a gray-scale scanner. Both the gray-scale camera and recognition module equipment modifications result in improved MLOCR performance (measured by the generation of more barcodes), thereby reducing the keying requirements for RBCS. Also, the addition of the WABCR allows greater flexibility in the preparation of mail by our customers. Rather than being limited to a single read zone on the lower portion of the envelope, modified MLOCRs can now read the bar code at any location in the address area of the mailpiece. Deployment of these MLOCR enhancements will be complete in the spring of 1997.

Additional barcodes will be generated through the implementation of other MLOCR improvements currently in development. These programs, which have been piloted during Fiscal Year 1996, will increase the MLOCR's capability to barcode mailpieces by providing parallel recognition systems to work in concert with

existing multiline technology. Testing of prototype systems has shown increased barcode generation, which will further reduce the number of mailpiece images forwarded to remote keying operations.

During Fiscal Year 1996 the Postal Service Board of Governors approved capital expenditures of over $700 million for automation equipment. Included in these approval levels are the additional RBCS systems previously mentioned, a low-cost MLOCR that will phase out the remaining single-line OCR equipment, a codirectory improvement to the existing multiline recognition equipment, and additional barcode sorters to process mail to delivery-walk sequence. With the exception of RBCS, which began deployment in Fiscal Year 1996, all these programs that aim to increase the volume and improve the processing of barcoded letter mail will be deployed in Fiscal Year 1997.

At the conclusion of Fiscal Year 1996, USPS-applied barcodes had increased by 20 percent and customer-applied barcodes had increased by approximately 12 percent. The current mix of customer-applied (50.9 percent) and USPS-applied (49.1 percent) barcodes represents 70.1 percent of the total letter mailstream of 129 billion pieces annually.

Deployment of automation equipment contributed to the increase in barcoded volumes, which resulted in record Postal Service performance during the past year.

b. Remote Encoding Centers. In May 1993, an arbitration decision was issued that the Postal Service must first offer the keying jobs for RBCS to its employees, before contracting out such work. In November 1993, the

Postal Service and the American Postal Workers Union signed a memorandum of understanding, bringing the RBCS keying and maintenance jobs in-house. Twenty-four of the twenty-seven P&DCs that were initially supported by contract keying units are now supported by postal keying operations. The remaining contractor keying sites will be converted by November 1996. All RECs are to be staffed by postal employees, with a national ratio of 30 percent of the work hours being performed by postal career employees and the remaining 70 percent by transitional employees.

The RECs are supporting production of barcoded letters at an annual rate of about 20 billion pieces.

c. Automation/Mechanization – Flat Mail. A number of both development and production activities to mechanize and eventually automate the processing of flat mail were accomplished during Fiscal Year 1996. These activities included various improvements to the deployed fleet of FSM-881 flats sorters; deployment of a new flats-sorting machine to virtually eliminate manual operations; development of flats OCR capability; development of a high-speed flats feeder; and a contract awarded to deploy equipment to mechanize the forwarding of approximately half a billion flat mailpieces per year.

Fiscal Year 1996 saw the initial deployment of a new FSM-1000 sorting machine. This piece of equipment virtually eliminates the manual operation, resulting in increased productivity. Deployment of the first 100 FSM-1000 machines will be complete in the summer of 1997. Requirements for an additional 240 machines have been identified and economically justified.

In addition to mechanizing the existing manual flats operation, we have initiated a flats OCR development program. The OCR will be utilized to process those flats that have not been barcoded by our customers. The OCR technology could provide a cost-effective method of processing our increasing flats volume by eliminating manual keying of ZIP Codes. Flats OCR development activities during Fiscal Year 1996 demonstrated promising results. We will test competing flats OCR technology next year and make a decision to deploy based on cost and performance of the equipment.

In June 1996, $27.5 million in capital funding was approved for the purchase of mechanized flats-forwarding terminals (MFFTs). A contract was awarded for this equipment in September and deployment will begin in November 1996. This equipment will allow for more efficient processing of the almost one-half billion pieces of flats mail which are forwarded each year. In addition to reducing the number of handlings, the new MFFT uses an environmentally sound linerless label, which is half the cost of today's lined label. The new label alone will save $1.2 million and 300 tons of paper sent to landfills.

d. Parcel Automation. In order to automate the sorting of packages, the deployment of the Postal Service-designed package barcode sorting system was completed in 1996. The system not only processes prebarcoded parcels, but also applied barcoded labels to nonbarcoded pieces entered into the bulk mail network, ensuring that all packages have a barcoded ZIP Code. Under this concept, all subsequent downstream handling can be sorted using the barcoded ZIP Code.

e. Enhanced Drop Shipment Appointment System. The Enhanced Drop Shipment Appointment System allows mailers and consolidators to make appointments electronically and to obtain arrival and unloading information within 24 hours. Enhancements provide new planning and tracking reports for internal (Postal Service) users, greatly reduce the number of phone calls being made for appointments, expand the available time for making appointments, and provide owners, mailers, truckers, and consolidators with information on late-arriving time-sensitive mail and damaged mail, without placing the onus of notification on the Postal Service. "Speedline" appointments, for the prompt unloading of drop shipments containing six or fewer pallet positions, have been established.

A mechanism is built into the process to suspend access to electronic appointments for mailers who do not adhere to appointment schedules. The system also provides on-screen and hard-copy reports for mailers and for postal customers to track appointments made, canceled, and changed; the number of no-shows; average unload times by type of load; and condition of load upon arrival. Each load is closed out within 24 hours to provide customers with the status of their mailings.

f. Postal Operations Centers. In the fall of 1994, the Postal Service introduced its National Operations Center at Headquarters. The center was designed to monitor customer mailing activity, to assess the ability of the postal system network to efficiently and effectively handle the mail volume, and to redirect resources, when necessary, to ensure that service commitments are met. The Operations Center concept has now been expanded

to the Postal Service's Area Offices. The Centers continue to update and expand their information and communications systems in order to improve their ability to expedite the resolution of customer issues and information needs.

g. Small Parcel Automation Rate. In April 1996, the Postal Service requested and received approval from the Postal Rate Commission to establish an automation rate for certain nonpresorted bulk barcoded First-Class and Priority Mail small parcels. Qualifying mail is entered for outgoing primary distribution at three test sites on a two-year experimental basis and receives a 4-cent-per-piece discount. These parcels are processed on a small parcel and bundle sorter (SPBS) equipped with a barcode scanner. Postal Service goals in requesting this test are (1) to determine whether it is feasible to offer an automation discount for nonpresorted First-Class and Priority Mail small parcels; (2) to gauge mailer interest and acceptance of this type of discount; and (3) to confirm that the use of a barcode scanner with an SPBS provides significant sorting quality and productivity enhancements when compared with the traditional SPBS keying operation. The Postal Service will also use the data collected in this test to develop future distribution concepts for small parcels. These concepts will serve as the vehicle to drive development of the technology required to improve sorting quality and productivity.

2. Material Handling

Major progress has been made within the past decade toward automating and mechanizing the processing of our various product lines. However, the actual physical

movement of mail within a facility has been a very manual operation, requiring personnel to feed, sweep, load, and move the mail from one operation to the next. The area of material handling has been identified as the next major investment target area for applying new technologies to constrain work-hour growth.

This year the Postal Service Board of Governors approved the first two phases of the tray-management system (TMS), as well as a robotic material-handling project. These programs will make significant contributions toward work-hour containment as they provide a more controlled processing environment.

The TMS is a state-of-the-art intelligent material-handling system to support flat and letter mail operations in P&DCs. One of our most important strategic programs, TMS is designed to be standardized, flexible, and modular. It will improve plant efficiency by providing an even flow of trayed mail from operation to operation. With its modular, open control system architecture, TMS will add new capabilities in real-time decision support. Optimized operating schedules, reduced cycle times, and improved employee productivity are expected from the deployment of this equipment, which provides mail at the right place at the right time. Deployment of these production systems is scheduled to begin in the spring of 1997.

In addition to TMS, deployment of 100 robotic tray-handling systems for installation into P&DCs, BMCs, and Air Mail Centers was approved by the Board of Governors in August 1996. This program, scheduled for completion in 1997, automates (through the use of a pedestal-type robot) the loading, sorting, and unloading of mail

trays. A second deployment phase for robotic equipment, to include both pedestal and gantry robots, is scheduled for capital approval in 1997 and is intended for wider applications. Development of unloading sleeved and strapped letter trays is nearing completion, as is the capability to handle multiple trays. Further development through 1997 will focus on Opening Unit operations, including the automation of removing straps and sleeves and of presenting letter trays for processing. In addition, a parallel project to develop robotic handling of covered and strapped flats tubs is planned for next year. By the end of 1998, it is anticipated that the robotic or automatic handling of open letter trays and flats tubs will be developed. When all aspects of this program are completed, many labor-intensive manual operations will be eliminated.

To improve the efficiency of handling and processing bulk mail, the Postal Service developed the Integrated Mail Handling System (IMHS). This program directly supports Classification Reform. The objective of IMHS is to streamline and reduce the handling of mail by placing it in containers. Over the past year, BMCs continued to install new container-loading and -unloading systems. This year, the remaining BMCs and P&DCs will begin to install new container-loading and -unloading systems and to expand facilities to handle cross-docking. BMCs and P&DCs continue to receive new material-handling equipment to support these changes. Fiscal Year 1996 saw the installation of 640 IMHS Pack Loaders/Unloaders. This equipment is used to unload and load containers of sack and parcel mail on trailers and vans at USPS facilities. When completed in Fiscal Year 1997, over 1,000

pieces of IMHS equipment will have been deployed to processing facilities.

Anticipate improvements range from enhanced customer participation through better mail preparation and packaging, to refined mail processing, transportation, and delivery. Emphasis is placed on using trays for mail rather than sacks, using pallet loads to support the rapid loading and unloading of trucks, and employing cross-dock mail-transfer methods. The Board of Governors approved funding for the IMHS project in Fiscal Year 1992, and deployment of associate IMHS equipment began in Fiscal Year 1994.

Other material-handling initiatives during Fiscal Year 1996 include the mail cartridge system and the integrated buffer system. The mail cartridge system (MCS) is a crucial development area for automating the feeding an sweeping of delivery barcode sorters (DBCSs). It provides an automated feed system that will recirculate local mail for two-pass sorting and, by replacing the DBCS sort pockets with a lightweight barcoded cartridge, allows robotic sweepside equipment to remove full cartridges and sort them onto racks according to their destination. MCS is designed to eliminate work hours associated with feeding and sweeping the DBCS to reduce sweepside errors. Development and testing of this equipment will continue during Fiscal Year 1997.

In the spring of 1996 an engineering prototype integrated buffer system (IBS) was installed in Merrifield, VA. This machine represents one of the first steps toward achieving a continuous, automated environment eliminating the need for many manual operations, including

sweeping, traying, moving, staging, and feeding mail to current automation equipment. Development of the IBS will continue during 1997.

The eventual deployment of material-handling equipment currently scheduled or in production, as well as that still in development, will provide us with ergonomically efficient, modernized "robotic" processing centers before the year 2000.

3. Other Mechanization

In Fiscal Year 1996, $163.7 million was approved for the purchase of mechanization for the small parcel and package mail product lines. These investments will result in the deployment of forty-seven SPBS machines by November 1997. The entire fleet of SPBS equipment of 230 machines will be further enhanced through the addition of a high-performance feed system. This feed system enhances the efficiency of the existing SPBS operations by reducing staffing, centralizing the induction area, providing mechanized container unloading, increasing mail-surge capacity, and providing a culling and bundle repair workstation.

4. Address Management

a. Forwarding. The Postal Service uses the computerized forwarding system (CFS) to forward mail to the 17 percent of the nation's population that moves each year. Approximately 2.6 billion pieces of forwarded mail and 42 million change-of-address cards were processed in 1996. CFS sites are located in 219 postal facilities nationwide. Each CFS site presently consists of a centralized

computer, mechanized terminals for processing letters and nonmechanized terminals for processing flats and magazines. The CFS database provides the data for the national change-of-address process.

b. 100 Percent Database Quality. In Fiscal Year 1996, Address Management continued to implement the 100 Percent Quality Database process, designed to ensure the highest quality information in all systems used to sort mail. This process has produced demonstrable improvement in the quality of the database. Several areas that have implemented this process continue to show improvements in the quality of barcodes applied to mailpieces. In addition, several other areas are at various steps in implementing the quality process.

c. Address-Quality Improvement. Improving address quality reduces the amount of undeliverable-as-addressed mail and improves the effectiveness of automated mail-processing operations. Products and services are made available to assist mailers in attaining and maintaining 100 percent deliverable address lists. Mailers who use these services produce more deliverable mailpieces and also gain access to work-sharing discounts. Mailers use products to access five-and nine-digit ZIP Codes, carrier route identifications, city-state designations, and street-level address information to verify the addresses to which they are mailing. Mailers can attain 100 percent deliverability through use of the following systems and products.

(1) Address Element Correction Service. The Address Element Correction (AEC) service was designed to correct addresses that could not be matched to the national ZIP+4 file using certified address-matching software. AEC corrects deficient addresses and identifies those that do not exist. Already, millions of addresses in mailers' files have been examined and corrected, leading to improved customer satisfaction. AEC uses a variety of computer logic resolution processes to correct as many addresses as possible, and it produces a diagnostic report about the mailer's list-management practices. Current electronic success rates average 60 to 65 percent of the previously unmatched addresses. More than 13 million addresses were successfully corrected in Fiscal Year 1996.

(2) Correct Address Notification. Responding to requests from the mailing industry and the need for consumers to use complete and correct addresses, the Postal Service developed a system of customer address notification. The notification effort seeks to influence the American public to use all the elements of a complete and correct address. Notification mailpieces were delivered to approximately 1.5 million customers during 1996.

(3) National Change-of-Address. The National Change-of-Address (NCOA) process provides business mailers with change-of-address information for customers on their mailing lists, thus ensuring that subsequent communications are directed to the current address. This process reduces the amount of undeliverable mail and promotes the use of automation-compatible address formats by ensuring that all addresses submitted are standardized with complete and accurate information, including ZIP+4 Codes. More than 2.9 billion

address corrections were provided to business mailers through the NCOA service during Fiscal Year 1996.

(4) Address Change Service. The Address Change Service (ACS) offers mailers automated address-correction service following the issuance of their mailings. By rapidly updating their address list, mailers improve the deliverability of their mail. The number of corrections processed through ACS increased to 112.5 million changes. These changes were accessed by 2,160 mailers.

(5) Delivery Sequence File. Delivery Sequence File (DSF) is a comprehensive address data system that expands the level of information beyond the ZIP+4 Code. The system contains a complete address register with carrier delivery sequence information. Mailers who match their address records to DSF can validate the existence of the address and identify and correct deficient elements. Consistent with other address quality systems, DSF standardizes the addresses submitted by mailers to ensure automation compatibility. Mailers in 1996 matched 4.9 billion addresses.

(6) Locatable Address Conversion System. The locatable Address Conversion System process enables business mailers to electronically update their rural-style addresses with new, locatable city-style addresses in areas that are experiencing 911 emergency response address conversions. Improved address quality increases mailer access to work-sharing discounts and improves deliverability. The Postal Service licensed twelve firms to assist mailers in updating their address records or to perform the matching service for business mailers.

(7) Barcode Certification. To ensure the accuracy of the barcodes applied by mailers, the Postal Service evaluates the ability of customers' hardware and software to produce properly assigned barcodes that meet Postal Service automation requirements. During the year, 120 vendors participated in the certification program, and 479 printers, 102 software packages, and 70 systems were certified as producing barcodes that meet required physical characteristics.

(8) Rapid Information Bulletin Board System. The Rapid Information Bulletin Board System (RIBBS) was introduced as a method to provide members of the mailing industry rapid access to postal information. Users can view the information online or participate in discussions on postal-related issues. Some of the information in RIBBS includes customer support rulings, BMC condition reports, *Federal Register* notices, weather and natural disaster condition reports, Domestic Mail Manual labeling lists, and minutes of the Mailer's Technical Advisory Committee meetings. RIBBS has 6,000 registered users.

(9) Automated Barcode Evaluator (ABE). To provide mailers with diagnostic information to improve the quality and accuracy of POSTNET barcodes and to screen for faulty barcodes, the Postal Service developed a rapid, self-feeding barcode evaluator. Designed for use during business mail verification, it provides the Postal Service with the ability to quickly and accurately determine if customer-printed barcodes meet USPS specifications and can be used in Postal Service barcode sorting systems. Beginning January 1, 1997, ABE will begin to evaluate customer-applied barcodes on automated letter

mail in over 250 sites. ABE will reduce processing and delivery costs as higher quality barcoded mail is accepted into our system.

(10) FASTforward℠. During Fiscal Year 1996, Address Management used cutting-edge technology to develop effective means for mailers to update addresses on mailpieces. This technology, known as FASTforward, will direct mailpieces to the customer's new mailing address when a change-of-address order has been filed with the Postal Service. FASTforward provides a fast, accurate, safe, and secure method for users of MLOCRs to apply new address information and the barcode for the new address as the mailpieces are being processed. In the future, FASTforward will be applied to other operating systems, allowing greater flexibility in the choices mailers have to meet Postal Service requirements for mail preparation.

d. The Mover's Guide. The Mover's Guide is an all-in-one guide to moving designed to improve customer satisfaction, reduce costs, and generate new revenue. The booklet provides Postal Service change-of-address forms, mail-forwarding information, moving-related commercial advertising, advertiser discount coupons, and tips on moving. Customer reaction continues to be positive and customers are provided with a greater understanding of the activities associated with forwarding mail. The Mover's Guide is a cooperative venture with a private company and is designed, printed, and produced at no cost to the Postal Service or its customers. A three-year strategic alliance has been signed with the company to continue the distribution of both the English and Spanish versions of the Mover's Guide.

e. MoversNet Web Site. In July, the U.S. Postal Service introduced just what a customer who uses a personal computer and is planning to move needs: a mover's Internet Website (http://www.usps.gov/moversnet/). MoversNet, a more informative, feature-rich, online version of the mover's Guide, is designed to generate new revenue while it offers time-and money-saving options to help the rapidly growing population of computer-equipped movers. Current features include the following:

- an interactive change-of-address form;
- before-and after-the-move checklists;
- packing tips;
- a link to the IRS Web site to obtain income tax forms on demand;
- answers to frequently asked mail-forwarding questions;
- a ZIP Code directory for all addresses;
- a phone number and address directory of the post office serving each address;
- commercial advertising and money-saving coupons; and
- a Hispanic translation of the entire site.

Providing at-home convenience and the correct address format with ZIP+4 Code for the mover's old and new addresses, the change-of-address form can be filled in on a consumer's personal computer, then printed, signed, and mailed in. Customer feedback and media

reports were highly favorable. The number of public visitors to the site reached approximately 3,000 per week and weekly "hits" topped 10,000. During its initial market test, the Postal Service received $50,000 in net advertising revenue. Additional revenue-generating enhancements are planned.

f. The Welcome Kit. The Welcome kit is a new revenue-generating, value-added program for customers who have recently moved. It is designed to reduce Postal Service costs and improve service. In Fiscal Year 1996, the kits were test-marketed in Boston, MA; Buffalo, NY; Indianapolis, IN; San Antonio, TX; and Sacramento, CA. National implementation is planned for January 1997. The Welcome Kit contains the following:

- the customer's address change Confirmation Notification Letter;
- local phone numbers and addresses for the customer's new area;
- a Settling-In Guide™, with helpful information and advice on getting settled;
- savings on products and services customers typically need after moving; and
- change-of-address forms for the Bureau of Motor Vehicles, the IRS, and voter registration offices.

5. Distribution Requirements System

Postal and mailer distribution and labeling changes require that updates be made to several systems and

databases. These updates have historically been accomplished independent of one another by manual means.

The Distribution Requirements database is subdivided into two sections; Mailer Distribution Requirements System (MDRS), and Postal Distribution Requirements System (PDRS). The overall database is controlled by the Office of Distribution Networks, Logistics, at Headquarters.

a. Mailer Distribution Requirements System. The MDRS is an automated means to review, revise, approve, and disseminate changes to the labeling lists contained in Module L of the Domestic Mail Manual. This process established a central database for Module L labeling lists. The 186 change process is now computerized, with the 186 form and *Postal Bulletin* article transmitted electronically for edit and approval. Changes with complete revised lists are subsequently downloaded to users and are available immediately upon publication of each *Postal Bulletin*. This system has been deployed.

b. Postal Distribution Requirements System. The PDRS will replace the distribution labeling information currently contained in the National Air and Surface System (NASS) and in the National Distribution Labeling Lists. PDRS will provide customized labeling lists for each mail-processing plant and facility. This system will be accessible to users through the local area network in a user-friendly Windows environment. The data contained in PDRS will be used by NASS for Automatic Dispatch Generation, by the Sort Program Subsystem of NDSS, and by Passport to standardize label information.

PDRS is currently under development and is scheduled for national deployment in early 1997. The system is based on a three-tier hierarchical structure. The first tier consists of national labeling and distribution requirements for each class and shape of mail, maintained at the Headquarters level. This information defines the minimum distribution requirements for every mail-processing facility. The second tier consists of intra-area exceptions and interarea bilateral agreements requiring a greater depth of sort than national distribution requirements. The third tier defines interplant distribution agreements, which represent an even greater depth of sort than required at the area level.

6. Transportation Information Management Evaluation System

The Transportation Information Management Evaluation System (TIMES) is an information system designed to improve scheduling, planning, and cost tracking of highway transportation. It provides a platform to collect information on highway volume and content and provides a means to monitor performance.

In 1996, the system was deployed nationally to over 400 P&DC sites and to all Airport Mail Center/Airport Mail Facilities (AMC/AMFs). Deployment to the Indianapolis HASP began in August 1996. Radio frequency technology was also implemented in the handheld data collection devices in over 100 sites in 1996.

Plans for Fiscal year 1997 are to interface TIMES with other logistics systems such as Railnet, Transportation

Routing Information Panel System (TRIPS), and the planned Mail Reservation System.

7. Mail Reservation System

The Mail Reservation System is a comprehensive real-time information-based solution designed to control the assignment and movement of mail across the Logistics network. Mail Reservation will replace the current Automated Classified Document Control System with new software programs that will enable Logistics to automatically respond to dynamically changing conditions. By monitoring the mail buildup during the assignment process, Mail Reservation can use business rules to selectively shut off routings as capacities are reached. As mail moves toward its final destination, near-real-time electronic tracking data will be used to monitor operations and trigger alerts as problems are detected.

An important benefit of Mail Reservation System will be the large amount of operational information that will be captured and correlated to support service assessment. By using system and ad hoc queries, Logistics staff will be able to pinpoint such persistent service problems as insufficient lift, late processed mail, or poorly performing contractors.

As part of this initiative, Logistics has embarked on an effort to communicate electronically with its air contractors in order to receive updates of flight information, including capacities available for mail. In Fiscal Year 1996, Logistics expanded its Air Electronic Data Interchange program to include American Airlines and United Airlines. Discussions with other air contractors are in

progress. A prototype alert system for commercial air was enhanced to simultaneously display operational information from multiple carriers.

During Fiscal Year 1996, Logistics conducted sessions with field personnel, Headquarters staff, and air contractors to gather user requirements and informational needs. Working with an outside technology firm, Logistics developed functional specifications for the air portion of the Mail Reservation System called AirRes. Postal Information Systems, IBU, and Engineering staff joined the effort by providing valuable assistance with system interface issues, standards, and capacity planning. The results of this work are currently being used to finalize cost estimates and resource requirements. System development is expected to occur during Fiscal Year 1997, with deployment by the end of calendar year 1997.

D. Delivery Unit Operations

1. General

During Fiscal Year 1996, the implementation of Delivery Point Sequencing (DPS) continued at a rapid rate. More than 2,085 additional delivery zones began to receive mail in delivery point sequence order, bringing the year-end total of delivery routes receiving DPS processing to 113,000, an increase of nearly 36,000 routes during the year.

At the end of Fiscal Year 1996, the number of city delivery points was approximately 81.1 million, rural deliveries totaled approximately 25.5 million, post office box deliveries were 19.6 million, and highway contract

routes served 1.6 million deliveries, for a total of 127.8 million delivery points.

2. Enhanced Street Performance

In Fiscal Year 1996, we initiated our enhanced street performance (ESP) program with the goal of improving delivery service by applying current technology on the street. This program will integrate data collection and communication technologies to provide delivery and collection confirmation and to assist in the overall management of street performance for consistency of delivery times and verification of carrier street times. ESP will provide the USPS with the capabilities for two-way messages and communications, carrier emergency alert notification, carrier and vehicle location, and delivery confirmation of tractable mail items. In fiscal Year 1996, we began pilot testing the different ESP solutions in eleven sites. The results of the pilot tests will be used to specify the requirements for the national system. Funding approval and contract award for the national system is scheduled for Fiscal Year 1997 with deployment to start at the beginning of Fiscal Year 1998.

E. Retail Programs

1. Retailing and Merchandising

The Postal Service has 33,862 classified units and 5,567 contract postal units. Roughly 88 percent of all retail revenue and 96 percent of all retail operating expense accrue from these two full-service options. They are augmented by Stamps by Mail, by 40,000 vending machines, and by the distribution of stamps through

consignment agreements at commercial retail outlets and automatic vending machines.

Ever-changing market trends and increasing competition created a challenging atmosphere in which the Postal Service looked for ways to optimize its core competencies at retail. Despite being the world's largest retailer in terms of number of "stores," when compared with private-sector retail, the Postal Service had only the most basic experience in merchandise sales and few of the tools or processes available to its peers in general retailing.

During 1996, two major categories for improvement included product development and merchandising and national promotion. In the former case, the development and operation of a Postmark America store provided the focus to gain experience quickly in a controlled, closely managed environment – a "laboratory" for learning about the technologies systems, and management processes needed to manage a retail enterprise effectively. Postmark America opened September 1996 in the Mall of America, Bloomington, MN. The store features American history and culture through its branded merchandise, and highlights the role of communications and the Postal Service. As they are tested and proven in this prototype store, some of the merchandise lines will start to be sold in selected post office outlets as well.

The second target for improvement occurred in planning and executing retail promotions. On the national level, two campaigns – Holiday and the Spring Gift-giving promotions – were developed and executed. Based on learning from leading national retailers, fine tuning

and adjustments were made in the process; the lessons from these promotions will be leveraged in more refined campaigns in the years ahead. One key output was the creation of national retail promotions calendar that will provide unprecedented structure and control to retail customer communications.

Promotional competencies were also built to support local priorities, such as support for the Retail Test Markets and for the thirty-three stores and nine post office upgrades in Atlanta as part of the Postal Service Olympics project.

2. Retail Site Locations

During 1996, Retail undertook a broad review of the retail location process to isolate opportunities for increasing customer satisfaction and net revenue performance through more efficient allocation of retail access points.

Beginning with Albuquerque, NM, and expanding to four additional markets (Austin, TX; Columbus, OH; Philadelphia, PA; and Miami, FL), Retail demonstrated the effect on revenue and customer satisfaction of reengineering the retail network to be more in line with customer convenience and access. The plan is based on demographics and a mean standard of postal facilities per capita, with strategies for adjusting the gap in cases where the ratio is significantly higher or lower.

Where feasible, strategies include incorporating key elements of the Postal Store concept (such as customer traffic management, open merchandising, and interior communications and signage) into existing post offices.

Additional strategies include expanded hours and locations, awareness-building, and low-cost-high-convenience alternatives for quickly adding new sites where warranted.

3. Electronics at the Point of Sale

No retailer has prospered over the past several years, or will continue to survive, without using information technologies to improve service, grow revenue, increase margins, and reduce operational costs. Included among the many innovations developed and in wide use in commercial retail are computerized merchandising systems, point-of-sale workstations, scanners, and signature-capture devices. Each is being employed to revolutionize counter operations, add operating flexibility, and dramatically reduce operating cost structure.

Starting in 1997, the Postal Service will begin a roll-out of a new POS system designed to take advantage of commercial technology. Known as POS (Point of Service) ONE, it is designed to replace current integrated retail terminals with commercial off-the-shelf hardware and software, along with support services and training. Postal customers will receive vastly improved and more timely information about available services and will have immediate access to all options and costs to make quick, informed decisions. Other key features will include automated, online check and debit/credit authorization and improved inventory management.

4. Postage Meters

Postage meters continued to be a viable method for the application of postage. In Fiscal Year 1996, the 1.5 million meters in service generated over $21 billion in commercial revenues. This revenue accounted for approximately one-third of all postal revenue. During this year continued emphasis was placed on three major meter initiatives: decertification of mechanical postage meters, centralized meter licensing, and development of new intelligent indicia.

Decertification involves the removal of more than 750,000 unsecured mechanical meters from the marketplace and replacing them with more secure electronic technology. This has involved stopping new placements while working with meter manufacturers to establish a schedule that initially concentrates on removing meters with the highest risk but ensures the removal of all mechanical meters within an acceptable time frame. Decertification is being accomplished with a view toward balancing our need to protect postal revenues with the impact on our customers. Since this effort began in December 1995, the mechanical meter population has been reduced by 99,000 meters while the total population has remained constant.

The Centralized Meter Licensing System (CMLS) provides for the issuance of licenses from a central location on behalf of all post offices. CMLS interfaces with the Meter Accounting and Tracking System, which accounts for all meter financial transactions. Eventually, CMLS will also track all meter placements and withdrawals. CMLS

pilot testing took place in three major metropolitan areas in preparation for national implementation in early 1997.

The Information-Based Indicia Program (IBIP) involves applying new technology to produce, by computers and digital postage meters, forms of postage evidencing that will result in each indicia being unique. Two-dimensional barcodes and cryptographic services are among the techniques being considered. Unique indicia will provide a basis for detecting counterfeiting and an opportunity for new, value-added services. During this reporting period, technical specifications were drafted and circulated in the *Federal Register* for comment. In addition, a series of public meetings was held to review the technical and regulatory aspects of this program. It is anticipated that the first of these new systems may be submitted for evaluation by the Postal Service in early 1997.

5. Retail Employees

The last in a three-part series of retail training programs was completed in Fiscal Year 1996. "EXCELLENT SERVICE, Reinforcing the Vision" – presented to over 20,000 supervisors, managers, and postmasters responsible for retail operations – emphasized skills building for managers in order to reinforce expectations for customer service at the retail counter. Approximately 105,000 retail clerks and managers participated in the world's largest customer service training initiative in 1994, and again in 1995. Both programs raised expectations for courtesy and service from the customer's perspective. Video series

from all three programs are available for ongoing training and refresher needs.

F. Information and Research Programs

1. New Business Opportunities

a. Electronic Commerce. We developed the concept of postmarking emails to address the security, legal, and business needs of people trying to communicate through the Internet. Since more email than physical mail is sent on an annual basis, we conceived of simply extending the USPS' role into this huge market by creating an email and electronic document postmarking system – one that can inform the recipient of any tampering with the document while it was en route to the customer. We successfully tested and launched our first system in June 1996. Since then over twenty-five customers have signed contracts committing themselves to paying for each email they wish us to postmark. These customers include Citibank, Chemical Chase, Wells Fargo, Aetna Insurance, Motorola, Levi Strauss, Fujitsu, and a number of government agencies and post organizations. Customer response to this offering has been nothing short of phenomenal!

We are preparing to accept a second system in January 1997 and plan to sign up many of these same customers for this enhanced service. Our limited market trials are set to begin in early 1997.

b. Hybrid Services. EPost and NetPost products offer business customers physical delivery of electronic messages. EPost provides large businesses overnight mail delivery at First-Class Mail rates by sending letter data

electronically for local printing and next-day delivery. NetPost is a "desktop-to-mailbox" hybrid service offered to small businesses and home offices to make advertising through the mail more convenient and effective.

We will begin market trials for EPost and NetPost in early 1997.

c. **Reply Card Scanning.** The customer-initiated payment system is a hybrid bill-payment alternative that eliminates the need for consumers to use either a check or a stamp, allowing invoicers lower costs and faster receipt of remittances. Consumers agree with participating invoicers to have their checking accounts debited when they drop a barcoded business reply card in the mail, giving consumers control over the payment date. The Postal Service transmits the card's barcode information to the bank allowing the bank to complete payment to the invoicer.

We completed a successful operations test and will test market the product in the spring of 1997.

d. **Kiosks**

(1) **Deliver America: Domestic.** Deliver America is an electronic catalogue shopping service that is being pilot tested in Atlanta, GA. It offers the consumers an easy, quick, and convenient way to select, order, and arrange delivery of quality merchandise from their favorite retailers. It offers merchants a new low-cost marketing and sales channel to reach more customers more often. Our partners for this test include Service Merchandise, Microsoft, 1-800 Pro Team, Harry and David's, Paul Fredrick, Fannie Mae, and the U.S. Mint.

This program was successfully launched in Atlanta in time for the Summer Olympics. Plans are currently being made for a market test in several additional cities during 1997.

(2) Deliver America: International. The international pilot test for Deliver America is under way in Tokyo, Japan. The pilot features four American direct marketers: Neiman Marcus, Book-of-the-Month Club, Paul Fredrick, and International Golf Outlet. Kiosks are placed in three retail locations with research planned to measure consumer response to electronic shopping. Japan was selected for the pilot test based on consumer demand for U.S. merchandise and merchant demand for the Global Package Link service. Next steps include a market trial in 1997.

(3) Web Interactive Network of Government Services (WINGS). WINGS is a low-cost, broad-reaching, electronic delivery channel of national scope and local impact. This delivery channel enables government agencies – federal, state, and local – to electronically provide government information, services, and products to the American public in a streamlined, simplified, customer-friendly, confidential, and efficient manner. WINGS represents an opportunity for the Postal Service to capitalize on our national presence, traditional business capabilities, and profound technical expertise. WINGS enables the USPS to capture a new electronic market that is growing at an astonishing rate.

WINGS began as a White House Service to the Citizen initiative and is the U.S. representative on the G7 Government Online project. WINGS went live in July

1996 with a pilot test focused in the Charlotte/Mecklenberg County region of North Carolina. The service is being evaluated for customer satisfaction, agency participation, cost-effectiveness, technical robustness, and Internet connectivity through the use of twenty-five public access kiosks. WINGS will expand to a full market trial in September 1997, making the integrated services of over sixty local, state, and federal agency partners available to Americans.

e. **Financial Services**

(1) **Money Mover.** Money Mover is an umbrella program for our existing international and domestic money order business and a new money-by-wire service covering both domestic and international markets. This service allows moderate-income consumers to move funds safely and conveniently in both paper and electronic forms.

"Dinero Seguro" (Safe Money) is our first money-by-wire product, initially targeting Mexican immigrants, but designed for expansion to additional Latin American markets. We are currently in a market test involving eighty-nine post offices in thirteen markets in California and Texas.

(2) **LibertyCash.** LibertyCash is a stored value card, initially to be used for payment of postal products and services at retail units. We plan to expand the applications of this card to include other postal services and acceptance by other retailers. LibertyCash gives small businesses and consumers a safe and convenient method of paying for postal services.

We are currently in an operations test in thirteen post offices in Colorado and California, and began marketing collectible cards through a 888 number this fall.

(3) FirstClass PhoneCard. The FirstClass PhoneCard is a prepaid phone card that provides customers with a convenient, cost-effective method of making long-distance telephone calls. In partnership with American Express, we successfully market tested the card last year and are now offering the FirstClass PhoneCard at 10,000 postal retail units.

(4) Remitco. Remitco will be a national network of payment-processing centers that minimize mail transit times for large businesses that receive regular and predictable payments. We will begin a pilot test in New York in the second quarter of 1997.

2. Information Systems

The focus of Information Systems in Fiscal Year 1996 was to support the technology architecture and application development of the major programs described elsewhere in this document (Call Centers, Track and Trace, Point of Service, etc.). Information Systems also continued expanding the postal information technology infrastructure. This infrastructure provides the foundation for connecting postal operating units, customers, and suppliers.

a. The Postal Information Technology Infrastructure. The continuing focus of this program is to enable key USPS business initiatives and business process

improvements by building a standard information technology base infrastructure upon which systems can be deployed in postal facilities in a fast and cost-effective manner. This infrastructure provides these facilities basic technology, such as electronic messaging, communications connectivity, office automation, and a platform for business-specific tools and applications. In Fiscal Year 1996, we extended this infrastructure to reach more than 5,000 additional postal facilities by providing them with a communicating computing platform. We expect to extend this to an additional 3,000 postal sites and 100 external partners in 1997. In Fiscal Year 1996, we also received Board of Governors approval for the first phase of the Associate Office Infrastructure (AOI), which begins deployment in 1997. AOI will provide a shared computing and communication infrastructure for more than 4,000 offices on new POS terminals. AOI will also provide electronic distribution of functional and informational updates, as well as administrative and operational support to the POS terminals and to other computerized systems at the same location.

b. **Internet/World Wide Web (www.usps.gov).** The functions, capabilities, and usage of the Postal World Wide Web services grew considerably in Fiscal Year 1996, with the addition of several significant features. MoversNet, the online version of the printed "Mover's Guide," brought an interactive online version of the change-of-address form. An online package-tracking system allows customers to look up the status of their Express Mail package on the Internet. Customers can also look up the post office that delivers their mail and obtain

information on stations and branches within a given five-digit ZIP Code area.

c. **Postal Explorer.** This product was developed as an easy-to-use electronic information tool that provides postal employees with fast access to critical business information, so that they can serve customers better. The initial offerings through this package include the Domestic Mail Manual, International Mail Manual, and Procurement Manual. Explorer contains a powerful search capability, which can rapidly retrieve information from any or all of the manuals it contains; the text is displayed exactly as it appears in the printed version. Explorer also offers sophisticated domestic and international rate calculators to compute postage and associated fees and discounts for any size and type of mailing.

G. Workforce Planning and Service Management

Workforce Planning and Service Management directs strategic initiatives to control work-hour cost, develop long-term labor strategies to minimize the economic impact of seasonal mailing patterns, and analyze employee mix and workforce flexibility to help the field achieve its service and budget objectives.

a. The ADVANCE Notification and Monitoring System continues into its second year of operation with over eighty mailers actively participating. The system currently monitors the delivery performance of non-automation compatible Standard A mail with requested in-home delivery dates. ADVANCE electronically transmits a tracking notice and an image of the mailpiece to over

6,500 delivery units nationwide; deliver unit supervisors record the date the mail arrived, the date delivery began, and the date delivery ended, transmitting the information back to postal managers and external customers. In the first nine months of Fiscal Year 1996, ADVANCE monitored over 500 mailings. In Fiscal Year 1997, ADVANCE will be updated to respond to an identified customer need and begin to monitor the delivery performance of periodicals.

b. The second phase of Barcode Accuracy testing is currently under way and will provide additional diagnostic information to assist Postal Service management in identifying inconsistencies in the nine-digit ZIP Codes given for addresses in the Address Management System and the National Directory Support System. This will enable the organization to focus on eliminating the root causes of incorrect barcoding and to improve performance in our automated environment. Reducing the number of incorrectly barcoded mailpieces in our system will result in improved service performance and increased customer satisfaction.

c. The Collection Management System was designed to improve the collections process in EXFC city zones. Data collection devices have been deployed to the districts to support their efforts to improve the timely collection of mail by our delivery workforce. Delivery personnel are equipped with a scanning wand that is used to record the time a collection box has been picked up. This information allows delivery managers and supervisors to monitor collection activities. Planned

enhancements to data management and reporting systems will contribute to the tools available to field management for continued improvement of First-Class Mail service performance.

d. We are continuing to provide field training sessions and individually tailored presentations to enhance our employees' understanding of, and ability to use, available tools for performance improvement. Currently scheduled initiatives include the following:

- four Postal Satellite Training Network broadcasts
- EXFC contract changes (September 1996)
- Process Management (October 1996)
- EXFC Updates (March and July 1997)
- EXFC Training Video (September 1996)
- Revised EXFC User's/Reports Guide (November 1996)

e. Technological developments have provided the opportunity for investigation of new analytical tools and products that can provide service diagnostics online, without the aid of overhead personnel. These include exploring both optical and radio technologies as solutions for passive collection of diagnostic data. Additionally, Workforce Planning and Service Management is working with the Marketing group to specify new measurements that will drive performance improvements against customer specifications in targeted product lines. Initial targets for this work are merchandise delivery, advertising mail, and transaction correspondence.

f. Our future success as an organization will be significantly influenced by our ability to use work hours efficiently and to maintain stability in our total complement relative to work load. New administrative staffing criteria projects will be launched this year, along with the development of staffing and scheduling modeling tools to assist postal managers in this important area.

g. Administrative staffing criteria reviews will follow a three-step process. First, we will determine the role and range of responsibilities to be carried out by these jobs by analyzing the work content currently being performed and the expectations of functional area managers, and then making hard decisions on what we specifically expect from these jobs. Second, we will identify (1) the factors that determine work load and (2) how the duties assigned to these positions can be linked to specific factors that predict work load. Finally, we will establish a method for measuring the work load and linking that to the process of allocating positions nationwide without increasing the overall employee complement. Workforce Planning and Service Management staff, as well as knowledgeable personnel from the area offices and Performance Clusters, will perform these analyses. This type of systematic staffing review provides us the opportunity to explore the use of new and more effective methods of determining work load-based staffing levels.

h. The Organization Management Staffing System (OMSS) is in the process of being redesigned. OMSS is a human resources application that tracks the formal organization structure of the Postal Service and is the vehicle for authorizing nonbargaining unit staffing in all organizations. This redesign effort, which was started in Fiscal

Year 1996, is assessing the use of OMSS for tracking authorized staffing beyond the relatively small number of nonbargaining unit positions now carried in the system. We are looking at using OMSS to track the staffing recommendations that come from currently deployed computer modeling tools as well as those under development.

i. To support managers in making staffing changes that are consistent with operational changes, we are in the process of developing a simplified staffing system that will provide, in a single database, the information frequently used in the field for making staffing decisions. We plan to roll the data elements into a single straightforward report and centralized database.

j. Several computer modeling and analysis efforts are under way to help field managers develop staffing and scheduling plans that reflect work load. Along with these modeling projects, we will provide refresher training for modeling tools now being used in the field.

k. Work load requirements have changed since reorganization in 1992. Criteria used to address staffing issues at that time were too often based on the work load that existed in the former organization. Our focus for the future is to encourage uniformity and consistency in the way positions are filled, while maintaining flexibility to adjust as work load shifts.

Financial Highlights

chapter three

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A. Financial Status

1. General

The Postal Service recorded $56.4 billion in operating revenues in Fiscal Year 1996. Operating expenses for the year totaled $53.1 billion, resulting in an income from operations of $3.3 billion. With investment income of $142 million, debt interest expenses of $368 million, and a $1.5 billion interest expense on the deferred retirement liability, the net income in Fiscal Year 1996 was $1.567 billion. This is the second most profitable year in the history of the Postal Service.

As of September 30, 1996, the net capital deficiency of the Postal Service was $2.624 billion. (See Table 3.8.)

In addition to direct competition in the marketplace and the widespread use of technology that replaces hard-copy messages, the Postal Service also faces financial challenges due to actions taken by the federal government. In recent years, an important component of Postal Service financial performance has been cost transfers from the government. Table 3.2 shows the magnitude of these transfers, which totaled $5.501 billion in Fiscal Year 1996.

The transfer to the Postal Service of responsibility for postal annuitant costs began with enactment of the 1985 Omnibus Budget Reconciliation Act (OBRA), which required the Postal Service to fund health benefit costs for all postal annuitants who retired after September 30, 1986.

Subsequent OBRAs expanded the Postal Service's responsibility for annuitant health benefit costs and

included annuitant cost-of-living adjustments (COLAs). Currently, the Postal Service is responsible for health benefit costs and COLAs of postal annuitants who retired after June 30, 1971, and their survivors. The cumulative impact of postal annuitant COLA and health benefit costs transferred to the Postal Service as a result of all OBRAs since 1985 was $10.6 billion through Fiscal Year 1996, as noted in Table 3.2. This table also details the $56.0 billion in cost transfers from the taxpayer to the Postal Service since the early 1970s. The most recently transferred costs of Civil Service Retirement System annuitants' COLAs and annuitants' health benefits will grow rapidly over the next few years, creating upward pressure on postal rates.

2. Income

a. **Mail and Special Services Income.** Revenues from mail, services, and appropriations in Fiscal Year 1996 totaled $56.4 billion (see Table 3.3). Revenues from mail were up 3.9 percent and services revenue increased by 5.9 percent.

b. **Interest and Investment Income.** The Postal Service's interest and investment income for Fiscal Year 1996 was $141.7 million (see Table 3.3).

c. **Appropriations.** The Postal Service is authorized to receive three types of appropriations: public service, transitional costs, and revenue forgone (see Table 3.4).

The public service appropriation reimburses the Postal Service for providing uniform, nationwide mail service. By law, the Postal Service is authorized to request

$460 million for public service. However, the Postal Service neither requested nor received any public service appropriation for Fiscal Year 1996, even though it continued to provide service throughout the country. This marked the 14th consecutive year that no public service subsidy was provided. Appropriations accounted for only 0.2 percent of the total revenue of the Postal Service in Fiscal Year 1996 compared to 26.8 percent prior to the Postal Reorganization Act in 1971 and 2.4 percent in Fiscal Year 1986.

The transitional cost appropriation reimburses the Postal Service for workers' compensation payments for injuries to employees of the former Post Office Department so that current rate payers are not burdened by debts incurred over 25 years ago. The Postal Service requested and received $36.8 million for this purpose for Fiscal Year 1996, which was transmitted to the Department of Labor.

As revised by the Revenue Forgone Reform Act of 1993, the Postal Service received a revenue forgone appropriation of $56.1 million in Fiscal Year 1996 to fund free rates for the blind and overseas voting. An additional $37 million was accrued in 1996 to reimburse the Postal Service for certain past revenue forgone amounts due as well as prospective amounts to be earned through 1998.

3. Costs

a. General Analysis. Operating expenses increased from $50.7 billion in Fiscal Year 1995 to $53.1 billion in Fiscal Year 1996 (see Table 3.1).

Personnel and related costs grew 1.8 percent to $42.7 billion in Fiscal Year 1996. Nonpersonnel expenses – including transportation, supplies, and services – increased by 18.6 percent over Fiscal Year 1995.

b. Salary and Benefit Costs.

(1) Increases. Personnel compensation and benefits grew 1.8 percent over 1995. The combination of moderate work-hour growth, labor contracts that shifted 1996 costs to 1995 in the form of lump-sum payments, and reductions in workers' compensation expense led to the smallest growth in compensation and benefits since postal reorganization. Increases in retirement and life insurance expenses were driven by COLAs that were earned in prior years but just now rolled into base salary, thus increasing the base upon which these expenses are calculated.

Most employees covered by collective bargaining agreements received a 1.2 percent general increase in base salary, as well as longevity increases for eligible employees and semiannual COLAs of $104 and $416. In addition to merit pay salary adjustments or lump-sum payments for individual performance, most professional and managerial staff participated in the Economic Value Added (EVA) variable pay program.

Overall, the average annual base salary for a postal employee was $33,952. Adding benefits, overtime, premiums and lump-sum payments, the average annual salary and benefits per total work year increased to $44,314. Together, personnel compensation and benefits accounted for 77.6 percent of the Postal Service's total expenses.

(2) **Retirement Costs.** The majority of Postal Service career employees hired before January 1, 1984, are covered by the Civil Service Retirement System (CSRS) and contribute 7 percent of their basic annual salary to the Civil Service Retirement and Disability Fund. The Postal Service provides a matching contribution for each employee.

The Postal Service is liable for that portion of any estimated increase in the deferred liability of the CSRS Fund attributable to Postal Service employee-management agreements that authorize increases in employees' basic pay on which benefits payable from the CSRS Fund are computed.

The estimated increase in the deferred retirement liability for active CSRS employees is determined by the Office of Personnel Management, amortized over 30 years, and paid by the Postal Service in 30 equal annual installments, including interest computed at 5 percent per year. The total increase in the annual expense layer resulting from increases in basic annual salary was approximately $229.1 million in Fiscal Year 1996.

The Fiscal Year 1989 OBRA transferred to the Postal Service responsibility for COLAs of postal annuitants who retired after September 30, 1986, and their survivors. The OBRA of 1990 superseded the OBRA of 1989 and expanded the Postal Service's responsibility for the cost of COLAs to include all its annuitants who retired after June 30, 1971, and their survivors, apportioned for federal civilian service performed after June 30, 1971. This liability and future liability layers will be amortized and paid over 15 years, beginning in the year the liability was

created. The annual expense related to annuitant COLAs was $749.9 million for Fiscal Year 1996. (See Table 3.6.)

In addition, the OBRA of 1990 created a retroactive liability for the Postal Service to reimburse the federal government for COLA payments for which the Postal Service would have been liable had the provisions of the OBRA of 1990 been in effect as of July 1, 1971. Total retroactive payments for these COLAs will be $1.7 billion. The present value of the payments was accrued and expensed in Fiscal Year 1991. The fifth and last payment of this liability, made on September 30, 1995, was $471 million.

The OBRA of 1993 obliged the Postal Service to pay interest on the retroactive assessments due under the OBRA of 1990. The interest assessment, totaling $1.041 billion, will be paid in three annual installments, beginning in Fiscal Year 1996. The assessment represents 5 percent interest on the employer's portion of annuitant COLAs and health benefits, previously paid by the U.S. government, that the Postal Service would have paid had the provisions of the OBRA of 1990 been in effect from July 1, 1971, through September 30, 1986.

(3) **Workers' Compensation Costs.** Workers' compensation costs are self-insured by the Postal Service and administered by the Office of Workers' Compensation Programs (OWCP) of the Department of Labor (DOL). The Postal Service annually reimburses DOL for payments made on behalf of active Postal Service workers' compensation claims during the previous DOL fiscal

year. In Fiscal Year 1996, the Postal Service reimbursement payment was $512.1 million, comprising $166.4 million in medical claim reimbursements (net of credits) and $345.7 million in compensation claim reimbursements for the period of July 1, 1995, through June 30, 1996 – the DOL chargeback year.

The Fiscal Year 1996 payment increased $11.0 million over the Fiscal Year 1995 payment of $501.1 million, reflecting an increase of $6.6 million for medical claims and $4.4 million for compensation claims. The average payment per compensation claimant was $13,795 – a decrease of $107 from the Fiscal Year 1995 average. The average medical claim was $1,519, a $10 increase over the prior fiscal year.

The Postal Service adheres to generally accepted accounting principles. Accordingly, the Postal Service practices accrual accounting and recognizes estimated future year payments associated with currently active claims. Changes in the discounted present value of the total estimated future payments are shown as an increase or decrease in the long-term workers' compensation liability on the Postal Service financial statements.

Thus, the annual Postal Service workers' compensation expense consists of three components: (1) the discounted present value of the estimated long-term liability for those cases that became active during the current fiscal year; (2) adjustments to the estimate of the future liability for cases that became active in years prior to the current fiscal year; and (3) a prorated share of the DOL workers' compensation program administrative expenses. The annual cash payment in reimbursement for active

claims is the portion currently payable of the increases described in the first two components and is a reduction in the amount of the overall increase in the long-term liability.

Please refer to Table 3.7 for a history of accrued workers' compensation expenses and annual cash payments.

B. Banking

Postal Service Corporate Treasury manages one of the world's largest cash collection and concentration systems through four channels: field bank accounts for 39,000 retail locations; credit and debit cards through a single processor; an integrated lockbox bank network; and direct electronic payments from major customers. In addition to having banks as customers, the Postal Service is one of the largest customers for commercial banks. Daily receipts of $300 million to $500 million are deposited into bank accounts at more than 5,000 commercial banks. Commercial bank account deposits that exceed the Federal Deposit Insurance Corporation (FDIC) insured limit of $100,000 are collateralized by government securities, which are held in safekeeping at Federal Reserve District Banks and branches. At the end of Fiscal Year 1996, $614 million in collateral was pledged by 410 banks.

During Fiscal Year 1996, Corporate Treasury approved four field banking service contracts, totaling $2.0 million, under the authority delegated by the Postal Service's Vice President of Purchasing to the Postal Service Treasurer. Area and District finance managers who

were delegated authority by the postal Treasurer to contract for banking services in the field were recertified upon completion of required ethics training courses. Field finance managers thereupon awarded nine competitively bid contracts under this authority. One of these competitive actions was awarded to United National Bank in Fayetteville, NC, a minority-owned bank. Competitive bidding of field bank accounts will be expanded in Fiscal Year 1997 through Corporate Treasury's relationship bank program (see below). Early requests for proposals will include all district bank accounts in the Pacific Area and all but one of the district bank accounts in the New York Metro Area.

During the year, Corporate Treasury continued developing its relationship banking strategy. Relationship banks include those banks with which the Postal Service maintains depository accounts in three or more districts; those in which the Postal Service maintains a corporate account; or those in which daily postal deposits exceed $1 million. Currently, 47 commercial banks meet these requirements. These banks, which constitute less than 1 percent of the Postal Service's banking contracts and represent more than 60 percent of its banking business, can offer the full range of sophisticated cash management products and services required by large companies like the Postal Service. In July 1996, Corporate Treasury held its first scheduled bank review meeting with its largest relationship bank, Citibank. Bank of America's review meeting was held in October, and the NationsBank review meeting is scheduled for January 1997. The goal of such meetings is to share information and strengthen the

partnership between the Postal Service and the relationship bank. Meetings will be scheduled for all relationship banks at least annually.

In Fiscal Year 1995, the Postal Service awarded a three-year $45.8 million contract to NationsBank Corporation and its subcontractor, First Data Merchant Services (FDMS), formerly NaBANCO, to establish a massive credit and debit card processing system in post offices nationwide. The national rollout of the program began in June 1995. When the implementation is completed in 1997, the Postal Service will be the largest acceptor of credit and debit cards in the United States. By the end of the fiscal year, the USPS had shipped 44,067 terminals to 18,647 locations. FDMS had also assisted in implementing card acceptance for the Philatelic Fulfillment Service Center, on-line services, Postmark America, the kiosk pilot in Atlanta, and Stamps by Mail. Credit and debit card activity under the NationsBank contract grew to 15 million transactions, valued at $800 million in Fiscal Year 1996. During this period, the average ticket value was $54.00.

On August 4, 1995, the Postal Service announced a nationwide initiative with minority-owned banks enrolled in the U.S. Treasury Minority Bank Deposit Program. On April 1, 1996, the Postal Service invested an initial deposit of $100,000 in 72 qualified minority-owned banks for the purchase of one-year FDIC-insured, interest-bearing Certificates of Deposit. These certificates will be renewed at maturity. Corporate Treasury also will monitor eligibility standards to increase minority-owned bank enrollment in the program.

Nonpayroll checks issued by the Postal Service provide improved cash management and internal controls that result from the use of controlled disbursement accounts. Improvements include quick stop payment and check replacement, positive pay and fraud prevention, accounting period check reconciliation, and higher interest income on float. In Fiscal Year 1996, the Postal Service issued 2.5 million checks (valued at $7.9 billion) and earned an estimated $20 million on float. Payroll checks are scheduled to be converted to controlled disbursement accounts in the second quarter of 1997, providing better services to our employees and expanding cash management and internal controls for the Postal Service.

In Fiscal Year 1996, Corporate Treasury awarded a national lockbox banking services contract to Citibank. Currently, operational accounts include Stamps Licensing, Philatelic Fulfillment Service Center, Stamps on Consignment, and the four meter manufacturers currently operating under the Computerized Meter Resetting System. Approximately 20 percent of the $80 billion annual postal cash flow will be processed through the lockbox network.

Corporate Treasury sponsored its 1996 National Treasury Conference from December 2-6, 1996, in San Francisco, CA. Attendees included the ten Area Treasury Coordinators (ATCs), District Treasury Coordinators, senior headquarters finance officers, and field finance managers. Speakers included senior postal officials – such as Chief Operating Officer William J. Henderson and Chief Financial Officer Michael J. Riley, postal relationship bank managers, and speakers representing academia

and the private sector. The meeting focused on contributing to the Postal Service's bottom line through improved treasury management processes. At the conclusion of the conference, ATCs formalized 1997 action plans for relationship bank solicitations in their areas.

In February 1996, the Postal Service was awarded gold Alexander Hamilton awards for cash management practices and overall excellence in treasury management. The awards were presented by the National Association of Corporate Treasurers and *Treasury & Risk Management* magazine. Competition included fifty other national and multinational private sector companies. A panel of judges – including treasurers and chief financial officers from high-performing private sector corporations – based its selection of the Postal Service on its overall cash management initiatives, including the change in daily funds concentration of $300 million from one to four channels. Added to the single cash-concentration channel with Global Payment Systems, Inc. (successor to National Data Corporation, Atlanta, GA), were channels involving a single national lockbox account with Citibank, national implementation of credit and debit card acceptance with NationsBank, and expanding business electronic payments to the Postal Service through Bank of America.

C. *Financing and Investments*

With the approval of the Board of Governors, the Postal Service continued to focus on minimizing debt and cash and on increasing its debt flexibility, in order to control interest expense and risk. The Fiscal Year 1996 results of this effort were a $1.4 billion decline in debt

outstanding to $5.9 billion and a $198.4 million decline in interest expense borrowings to $368 million. In the past four fiscal years, Postal Service debt has been reduced by $4.0 billion (40 percent), and interest expense by $270.2 million (42 percent).

In December 1995, the Postal Service used available cash to call a $1.5 billion note that was part of the $4.5 billion debt refinancing of 1992. The early retirement of the $1.5 billion note, with no prepayment penalty, reduced interest expense by $73.6 million in Fiscal Year 1996.

On September 27, 1996, the Postal Service signed credit line agreements with the Treasury's Federal Financing Bank. Under the terms of the agreements, the Postal Service can borrow up to $300 million overnight, on the same day it requests the funds. This is the first time in Postal Service history that access to same-day funds is available. In addition, the Postal Service can borrow up to $700 million with two days' advance notice and can set the maturity at anywhere from overnight to one year. The new credit line agreements have increased the Postal Service's ability to minimize cash and debt.

The Postal Service cash flow model continued to provide accurate short-term and long-term cash forecasting, allowing managers to further reduce debt and cash in Fiscal Year 1996. The average balance in the Postal Service Fund declined by $1.1 billion in Fiscal Year 1996, to $2.1 billion. Also, the fiscal year ended with cash and cash equivalents at a new year-end low of $310 million. The low level of cash represents extremely efficient cash

management for a corporation that processed more than $80 billion in cash during Fiscal Year 1996.

All available cash was invested during the fiscal year, and it helped produce interest and investment income of $141.7 million.

D. Analysis of Balance Sheet

On September 30, 1996, the balance sheet of the Postal Service (see Table 3.8) reflected total assets of $51.6 billion, comprising $1.4 billion in current assets, $17.9 billion in property and equipment, $31.9 billion in deferred retirement costs, and $0.4 billion in other assets. Total liabilities at the end of the period were $54.2 billion, with retirement benefits payable ($30.5 billion) composing 56 percent of this total. On September 30, 1996, the Postal Service had a net capital deficiency of $2.6 billion.

E. Capital Investments

1. Fiscal Year 1996 Developments

a. General. In October 1995, the Board of Governors approved a $9.5 billion five-year Capital Investment Plan for Fiscal Years 1996 to 2000. It represented a new five-year plan guided by the preliminary Strategic Growth Plan objectives and the *CustomerPerfect!* priorities to improve customer satisfaction, strengthen employee/USPS effectiveness, and improve financial performance. The Plan supported our basic mission of providing universal mail service to all of our customers. It included investments to increase organizational efficiency, maximize assets, provide operational capacity for changing

workload, improve service, create a better working environment, comply with legal requirements, and optimize information technology for an infrastructure that is universal, flexible, and user friendly. The $3.3 billion actually committed in Fiscal Year 1996 was the highest level of commitment activity since we began keeping records in the 1970s.

b. Financing. Capital assets were financed internally, through cash flow from operating activities as debt outstanding declined by $1.7 billion. The net cash provided by operating activities for the fiscal year was $3.6 billion and the net purchases of property and equipment were $1.8 billion.

2. Facilities

a. Smaller Projects Completed and Active Construction Projects. Smaller projects are defined as projects costing less than $10 million. During Fiscal Year 1996, 40 new construction, major renovation, and expansion projects were completed, as were 297 building-purchase projects. The cost of these projects exceeded $191 million.

Ninety-one projects (88 construction and 3 building purchase) are currently under way. The estimated cost of these projects is $296 million.

b. Major Facility Projects Completed. The following major facilities, costing more than $614 million, were completed in Fiscal Year 1996:

Project	Gross Sq. Ft. (thousands)	Completion Date
Real Properties MLP Limited Partnership Portfolio Acquisition (RRP)	4,027.0	Oct. 1995
St. Louis, MO (ISC renovations)	65.4	Jan. 1996
Louisville, KY (AMF)	80.6	Oct. 1995
Westchester, NY (Processing and Distribution Center (P&DC)/VMF)	489.0	Oct. 1995
Chicago, IL (P&DC)	987.5	April 1996
National Airport, Washington, DC (AMC)	124.5	May 1996
South River, NJ (Material Distribution Center)	315.0	April 1996
Santa Barbara, CA (P&DC)	238.0	June 1996
Waltham, MA (Northwest Boston P&DC)	374.0	July 1996

c. **Major Projects Under Way.** At the end of Fiscal Year 1996, the following major projects were in progress:

Project	Estimated Facility Cost (dollars in millions)	Scheduled Completion Date
New York, NY (Church Street renovations)	$45.9	Nov. 1997
Anchorage, AK (P&DC Expansion)	17.5	Feb. 1997
Atlanta, GA (AMC)	36.4	March 1998
Chicago, IL (Sugarhouse Terminal)	16.0	April 1997
El Paso, TX (P&DC, VMF, and Washington Park Station)	32.6	May 1997
Issaquah, WA (Mail Post Office)	10.1	Dec. 1996
Jacksonville, FL (Bulk Mail Center (BMC) Expansion)	$81.6	Dec. 1998
Las Vegas, NV (P&DC Expansion)	$10.9	July 1997
Quad Cities, IL (P&DC)	17.1	Aug. 1997
Seattle, WA (P&DC)	85.4	Nov. 1996
Terre Haute, IN (P&DC)	$14.6	July 1997

3. Equipment Purchases

Contracts were awarded during Fiscal Year 1996 for the following major equipment and vehicle programs:

Type	Amount (dollars in millions)
Additional Delivery Point Sequencing Bar Code Sorters	$ 362.0
Associate Office Infrastructure	16.2
Carrier Sequence Bar Code Sorters	35.9
CFS Flats Forwarding Terminals	15.9
Corporate Call Management	15.4
Delivery Bar Code Sorters	43.8
Delivery Unit Computer Systems	23.5
Integrated Mail Handling System	32.8
Low-Cost Optical Character Reader	42.5
Multi-Line OCR & Enhancements	29.9
Multi-Line OCR Co-Directories	10.3
Philatelic Fulfillment Automation	22.3
Point of Service Terminals	218.2
120 Remote Bar Coding Systems	59.0
104 Remote Bar Coding Systems	150.5
Replacement of 19 BMC Process Control Systems	8.4
Robotics Tray Handling Systems Phase I	28.9
Small Parcel & Bundle Sorters	43.4
Track & Trace Development & Testing Program	2.3

Tray Management System Phase II	38.2
Carrier Route Vans	111.4
Mixed Delivery & Collection Vehicles	122.0
Truck and Spotter Tractors	$ 73.1

4. Future Developments

The $14.3 billion Capital Investment Plan for Fiscal Years 1997 to 2001, approved in October 1996, is set to provide a positive effect on the financial results predicted for Fiscal Years 1997 and 1998 and a "jump start" on a long-run improvement strategy. Investments scheduled in Fiscal Year 1997, to influence both Fiscal Years 1997 and 1998 operating results, emphasize customer service/revenue-generating projects and technologies that produce labor savings or cost avoidances. These two strategies, as well as maintaining the Postal Service's information technology and asset infrastructure, are evident throughout the $14.3 billion five-year plan. Of the $4.8 billion increase over the $9.5 billion Fiscal Years 1996-2000 Plan, almost 80 percent is attributable to technology and customer service/revenue strategy investments.

Table 3.10 summarizes the capital commitments detailed in the Fiscal Year 1997-2001 five-year Capital Investment Plan.

F. Revenue Assurance

Since late 1994, when the Revenue Assurance unit was created, the group has undertaken a variety of activities designed to reduce the risk of revenue loss, improve controls, and create awareness of revenue assurance on

all levels, while preserving the balance between customer focus and internal controls.

In April 1995, Revenue Assurance supported a benchmarking team to examine the Plant Verified Drop Shipment process. The team, commissioned by area finance mangers, surveyed plants and districts across the country, visited postal sites in every area and visited mailer plants and outside businesses. The study was completed in February 1996, and the team's efforts resulted in several significant findings and recommendations. The final task force report was issued, and implementation of the recommendation is under way to ensure stronger internal controls and increased revenue for the Postal Service.

In November 1995, Revenue Assurance kicked off an internal national awareness campaign to focus attention on protecting postal revenue. Articles and a poster on revenue assurance appeared in internal communications media to reinforce the message that every employee shares responsibility for protecting revenue. In addition, Revenue Assurance created an employee recognition program to communicate success stories and reward employees who have provided outstanding serve in preventing revenue loss for the Postal Service.

Revenue Assurance has coordinated with Business Mail Acceptance staff to develop an extensive training package for mail acceptance and operations personnel. This training is aimed at verifying mail to ensure that proper payment has been made. In addition to this partnership, Revenue Assurance is working with Business Mail Acceptance to pilot-test automated systems to assist

clerks in verifying barcoded mail and in processing and collecting for Business Reply Mail.

In addition, the Revenue Assurance manager has been designated as the Bank Secrecy Act Compliance Officer for the Postal Service. Revenue Assurance developed a compliance program, instituted a "domestic-only" money order cashing policy, and developed an awareness campaign for international money order use. Other projects included working with Human Resources to establish full-time positions in field offices dedicated to revenue assurance activities and initiating a project to eliminate short-paid mail.

Table 3.1
Income and Expense Statement
(dollars in millions)

	FY 1995	FY 1996	Difference	Net Change %
Income:				
Mail revenues	$52,490	$54,524	$2,034	3.9
Special services	1,686	1,785	99	5.9
Revenue forgone appropriation*	117	93	(24)	–20.5
Operating revenue	54,293	56,402	2,109	3.9
Expense:				
Compensation and benefits	41,931	42,676	745	1.8
Other costs	8,799	10,437	1,638	18.6
Operating expense	50,730	53,113	2,383	4.7
Income from operations	3,563	3,289	(274)	7.7
Interest income	216	142	(74)	34.3
Interest expense on deferred retirement liabilities	(1,364)	(1,449)	(85)	6.2
Interest expense on borrowings	(566)	(368)	198	35.0
Imputed interest on OBRA of 1990	(79)	(47)	32	40.5
Net income	$1,770	$1,567	($203)	–11.5

* *Includes $54 million in Fiscal Year 1995 and $37 million in Fiscal Year 1996 to accrue net financial impact of the Revenue Forgone Reform Act of 1993.*

Application of Funds
Fiscal Year 1996
(dollars in millions)

Activities	Expense	Percent
Mail processing and window services	$16,476	30.0
Delivery services	15,964	29.0
Post office supervision and administration	4,751	8.6
Building and equipment maintenance and support	2,357	4.3
Transportation of mail	3,736	6.8
Building occupancy; supplies and services	3,615	6.6
Servicewide expenses	5,541	10.1
Headquarters, area administration, and Inspection Service	1,194	2.2
Depreciation	1,342	2.4
Total	$54,976	100.0

Table 3.2
Selected Costs Transferred From U.S. Government to U.S. Postal Service
(dollars in millions)

	FY 1990 and Prior	1991	1992	1993	1994	1995	1996	Total
				(Fiscal Years)				
CSRS deferred liability	$15,406*	$1,775	$1,896	$1,938	$1,996	$2,134	$2,362	$27,507
Public service costs**	5,114	460	460	460	460	460	460	7,874
Excess of FERS over CSRS	2,943	1,011	1,049	1,108	1,198	1,363	1,385	10,057
CSRS retirement (OBRA of 1987)	350	—	—	—	—	—	—	350
FEHB fund (OBRA of 1987)	430	—	—	—	—	—	—	430
Post-86 annuitant health benefits (OBRA of 1985)***	329	—	—	—	—	—	—	329
Post-86 CSRS annuitant COLA (OBRA of 1989)***	74	—	—	—	—	—	—	74
Post-71 annuitant health benefits (OBRA of 1990)	—	328	380	510	519	523	497	2,757
Post-71 CSRS annuitant COLAs (OBRA of 1990)	—	421	491	551	620	689	750	3,522
Prior year annuitant COLA and health benefits costs (OBRA of 1990)	—	1,901	81	70	54	34	—	2,140
OBRA 1993	—	—	—	857	43	45	47	992
Total	$24,646	$5,896	$4,357	$5,494	$4,890	$5,248	$5,501	$56,032

* *Excludes $285 million relating to Fiscal Years 1972-1974 which was reimbursed by special appropriation.*
** *Reimbursement amounts authorized by Postal Reorganization Act, but not received.*
*** *OBRA 1985 and OBRA 1989 were superseded by OBRA of 1990.*
Note: The cumulative impact of all OBRAs since 1985 through Fiscal Year 1996 was $10.6 billion.

Table 3.3
Source of Income
(dollars in millions)

Mail revenue	$ 54,524
Special services	1,785
Government appropriations for free and reduced rate mail	93
Total operating revenue	56,402
Total operating expenses	53,113
Income from operations	3,289
Interest and investment income	142
Interest expense-borrowing	(368)
Interest expense-deferred retirement liability	(1,449)
Imputed interest on retroactive assessment of employee benefits	(47)
Net income	$ 1,567

Table 3.4
Historical and Present-Year Impact of Congressional Appropriations on Mail Revenues, Fiscal Years 1971, 1976, 1986, 1996

(dollars in millions)

Year	*Total Mail Revenue*	*Mail Revenue without Appropriations*	*Appropriation Category*	*Income From Appropriation*	*Appropriation as a Percentage of Mail Revenue*
FY 1971*	$9,595.2	$6,664.9		$2,573.3	26.8%
			Deficiency in rates and fees	1402.1	
			Public Service	844.5	
			Other reimbursements	326.7	
FY 1976	$12,936.8	$11,292.3		$1,644.5**	12.7%
			Free and Reduced Rate Mail	724.5	
			Reconciliation for Prior Years	none	
			Public Service	920.0	
			P.O.D. Transitional Costs	58.9	
FY 1986	$29,839.2	$29,123.4		$715.8**	2.4%
			Free and Reduced Rate Mail	750.3	
			Reconciliation for Prior Years	–34.5	
			Public Service	none	
			P.O.D. Transitional Costs	39.1	
FY 1996	$54,616.8	$54,523.8		$93.1**	0.2%
			Free Mail for the Blind and Overseas Voting Material	56.1	
			Reconciliation for Prior Years	none	
			Net impact of Revenue Forgone Reform Act of 1993	37.0	
			Public Service	none	
			P.O.D. Transitional Costs	36.8	

* *The figures for FY 1971 are from the old Post Office Department prior to the creation of the Postal Service on June 30, 1971.*

** *This figure does not include the appropriation for Post Office Department Transitional Costs, which are remitted directly to the Department of Labor.*

Table 3.5
Analysis of Expenses
(in percent)

Personnel compensation	59.24
Personnel benefits	18.39
Transportation	6.80
Supplies and services	4.53
Interest on deferred liabilities	2.64
Depreciation and write-offs	2.45
Other	2.14
Rent and communications	1.47
Vehicle/building maintenance	0.92
Utilities	0.75
Interest	0.67
Total	100.00

Table 3.6
Retirement Costs
(dollars in millions)

	FY 1995	*FY 1996*
Retirement (CSRS)	$ 842.9	$ 877.1
Deferred liability (CSRS)	2,133.8	2,362.1
CSRS annuitant COLAs	688.7	749.9
Retirement (CSRS/dual)	34.4	36.3
Retirement (FERS)	1,270.0	1,472.9
Thrift savings (FERS)	400.1	489.1
Subtotal	5,369.9	5,987.4
Old age survivors disability insurance (OASDI)		
OASDI (dual)	34.5	34.5
OASDI (FERS)	838.7	906.5
OASDI (other)	135.0	141.4
Subtotal	1,008.2	1,082.4
Total	$6,378.1	$7,069.8

COLA = cost-of-living adjustment
CSRS = Civil Service Retirement System
FERS = Federal Employees' Retirement System

Table 3.7
Postal Service Workers' Compensation Expense and Cash Payments

(dollars in millions)

Fiscal Year	Estimated Annual Increase/Decrease In Active Claims*	Administrative Charge (DOL)	Total Annual Expense*	Payments to DOL for USPS Active Claims and Admin. Charges**
1972	$ 86.2	$ —	$ 86.2	$ —
1973	78.6	—	78.6	—
1974	93.7	—	93.7	28.5 ***
1975	237.9	3.0	240.9	34.7
1976	349.5	4.1	353.6	58.0
TQ	81.1	—	81.1	—
1977	624.4	4.7	629.1	82.9
1978	505.3	6.0	511.3	130.5
1979	746.1	9.0	755.1	147.9
1980	489.7	8.4	498.1	161.0
1981	465.7	8.7	474.4	174.4
1982	278.4	7.6	286.0	189.9
1983	–31.3	7.4	–23.9	188.4
1984	157.7	10.4	168.1	187.3
1985	313.1	10.5	323.6	194.0
1986	495.4	8.8	504.2	211.0
1987	307.0	8.7	315.7	235.5
1988	509.3	10.2	519.5	245.0
1989	680.1	10.8	690.9	270.6
1990	753.1	14.6	767.7	670.6 ****
1991	173.6	9.1	182.7	397.0
1992	1,070.7	14.4	1,085.1	453.5
1993	927.9	17.4	945.3	487.3
1994	310.7	16.1	326.8	501.4
1995	860.5	16.8	877.3	520.3
1996	$ 717.3	$ 19.2	$ 736.5	$ 531.3

* *All years prior to FY 1993 include nominal expenses for OWCP health benefits.*

** *Payments in this table are on cash basis by fiscal year in which the payments were made. Listed payments include payments for active USPS claims and for associated DOL administrative charges. Payments exclude all payments for Post Office Department claimants.*

*** *Payment was for FY 1973 and FY 1974 active claims.*

**** *Payment comprises FY 1989 and 1990 active claims and FY 1990 administrative charge. Separate payments were made in October of 1989 (FY 1989 active claims and FY 1990 administrative charge) and September of 1990 (FY 1990 active claims and FY 1991 administrative charge).*

Table 3.8
Highlights of Financial Condition
(dollars in millions)

Current assets	$ 1,447.1
Property and equipment	17,857.9
Deferred retirement and other	32,298.5
Total assets	51,603.5
Current liabilities	12,572.6
Long-term debt, less current portion	3,909.2
Retirement benefits payable	30,459.4
Other liabilities	7,285.8
Total liabilities	54,227.0
Capital deficiency	(2,623.5)
Total liabilities and net capital deficiency	$ 51,603.5
Total borrowing authority	$ 15,000.0
Debt outstanding	$ 5,918.7
Undrawn borrowing authority	$ 9,081.3

Table 3.9
Fiscal Year 1996 Capital Commitments

Line Item	*Plan (dollars in millions)*	*Actual*	*% Change*
Facilities	$1,281	$1,197	–6.6
Automation and mechanization equipment	1,218	1,220	0.2
Vehicles	375	330	–12.0
Retail equipment	80	220	175.0
Postal support equipment	377	340	–9.8
Total	$3,331	$3,307	–0.7

Table 3.10
Capital Investment Plan FY 1997-2001 Commitments by Program Categories
(dollars in millions)

Category	*1997*	*1998*	*1999*	*2000*	*2001*	*Total*
Facilities	$1,759	$1,376	$ 963	$ 720	$ 783	$ 5,601
Automation and mechanization equipment	2,743	1,075	586	180	222	4,806
Vehicles	101	51	43	23	213	431
Retail equipment	103	441	348	21	20	933
Postal support equipment	1,318	703	191	158	165	2,535
Total capital commitments	$6,024	$3,646	$2,131	$1,102	$1,403	$14,306

FILED

JUL 30 1997

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Record No. 97-27

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

COMMONWEALTH OF VIRGINIA, *EX REL.*,
SECRETARY OF THE COMMONWEALTH,

Petitioner,

v.

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,

Respondents.

On Petition For Writ of Certiorari
To The Maryland Court of Appeals

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* AND BRIEF OF THE VIRGINIA CREDIT UNION LEAGUE AS *AMICUS CURIAE* (IN SUPPORT OF PETITIONER)

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16 pp

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v

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE MARYLAND COURT OF APPEALS

MOTION OF THE VIRGINIA CREDIT UNION LEAGUE FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37 of the Rules of this Court, the Virginia Credit Union League (the "League") respectfully moves the Court for leave to file a brief *amicus curiae* in the above entitled case. Counsel for Respondents has not replied to movant's letter requesting consent; the Petitioners have granted their consent.

INTEREST OF THE VIRGINIA CREDIT UNION LEAGUE

The League is a statewide association serving both state and federally-chartered credit unions and it represents 265 credit unions in Virginia. Our members will suffer significant economic hardship and inconvenience if *Miserandino v. Resort Properties, Inc.*, 345 Md. 43, 691 A.2d 208 (1997), is not reversed. *Miserandino* places a substantial number of judgments obtained by our members against non-resident judgment-debtor's in Maryland and beyond in danger of being nullified and being deemed unenforceable. The present case will have a substantial impact on the League. If the Maryland Court of Appeals decision is allowed to stand, our members could lose significant amounts of money on void judgments or in costs associated with adjusting existing judgments.

The League represents the concerns of

numerous financial and business interests in Virginia which may be doomed to suffer dire consequences if *Miserandino* is not reversed. The Court should be aware of the ramifications *Miserandino* will have on the Virginia business community. The League therefore requests this opportunity to present its views on the instant case to this Court.

CONCLUSION

For the above stated reasons, we respectfully request the Court to grant this motion for leave to file the accompanying *amicus* brief in the present case in support of the position of the Petitioners.

Respectfully submitted,

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(July 14, 1997) 6

BRIEF OF THE VIRGINIA CREDIT UNION LEAGUE, *AMICUS CURIAE*[1]

INTEREST OF *AMICUS CURIAE*

The interest of *Amicus Curiae* is set out in the Motion for Leave to File, *supra*.

SUMMARY OF THE ARGUMENT

The Maryland Court of Appeals in *Miserandino v. Resort Properties, Inc.*, 345 Md. 43, 691 A.2d 208 (1997), erred in holding that the Virginia statutory method of service of process on non-residents violated procedural due process. In so doing, the court threatened the financial interests of our credit union members and the Virginia business community in general.

[1] Counsel for *amicus curiae*, Paul S. Bliley, Jr., authored this brief in whole. No person or entity other than that *amicus curiae* made a monetary contribution to the preparation and submission of this brief.

As reported in *Virginia Lawyer's Weekly*, Vol. XI, No. 39, p.21 (March 3, 1997), the ruling will "wreak havoc" on any number of Virginia judgments against non-residents that have been obtained using this method of service. This case, erroneously decided, should be reviewed by the Court on a writ of certiorari and should be reversed.

ARGUMENT

I. INTRODUCTION

The Maryland Court of Appeals held in *Miserandino* that Virginia's statutory procedure for service of process on non-residents does not meet the requirements of procedural due process. This ruling places judgments obtained by this method in serious jeopardy. Va. Code § 8.01-329 authorizes service of process on the Secretary of the Commonwealth as the statutory agent of non-residents. The Secretary of the

Commonwealth processes over 50,000 requests for service upon non-residents each year. The Secretary of the Commonwealth is required to send copies of the pleadings which have been served upon her by first-class mail to the defendant's last known address, and she must keep a record of dispatch as she mails them. The Commonwealth of Virginia, after being granted permission to intervene as a party to the case, has filed a petition for a writ of certiorari with this Court. This *amicus* brief is filed in support of the Commonwealth of Virginia's position.

II. THE MISERANDINO DECISION IS ERRONEOUS AND WILL UNNECESSARILY IMPOSE SEVERE ECONOMIC HARDSHIP UPON THE VIRGINIA BUSINESS COMMUNITY.

A. First-Class Mail Satisfies Due Process And The Full Faith And Credit Clause Requires A State To Recognize The Judgment Of A Foreign State When The Judgment Debtor Received Actual Notice Of The Foreign Action.

The League concurs with the legal views of the Virginia Attorney General regarding Miserandino v. Resort Properties, Inc., 345 Md. 43, 691 A.2d 208 (1997). We adopt all the arguments set forth in the Attorney General's Petition For A Writ Of Certiorari.

B. The Miserandino Decision Will Traumatize The Virginia Business Community By Imposing Huge Costs And Losses On Businesses Holding Judgments Obtained Through Virginia's Statutory Method Of Service Of Process On Non-Residents.

The 265 Virginia credit unions which are members of the League have significant business dealings with non-Virginia residents. This is especially true for our northern Virginia members. Northern Virginia is a densely-populated area in which people constantly cross state lines. Many non-Virginia residents, especially Maryland and District of Columbia residents, interact on a daily basis with Virginia

businesses. Virginia credit unions, therefore, deal with non-residents regularly, and often must seek judicial enforcement of debts owed by non-residents.

The Maryland Court of Appeals decision severely hinders and may block altogether our members' ability to enforce debts owed to them by non-residents which are evidenced by judgments previously obtained by our members. As recently reported, if the *Miserandino* opinion stands, "most Virginia default judgments will not be accorded full faith and credit in Maryland." *Virginia Lawyer's Weekly*, Vol. XI, No. 39, p.21 (March 3, 1997). By declaring Virginia's method of service of process on non-residents unconstitutional, the Maryland decision may essentially invalidate all judgments lawfully obtained through this method.

Over 50,000 requests for service in this manner are received by the Secretary of the Commonwealth every year, which indicates that the number of default judgments held by Virginia judgment creditors may be enormous. *Virginia Lawyer's Weekly*, Vol. XII, No. 6, p. A-2 (July 14, 1997). *Miserandino* will affect judgments in both Virginia and federal courts, because these requests for service come from actions in both Virginia and federal courts. Considering that judgments are enforceable for up to 20 years, the potential number of judgments affected by the *Miserandino* decision is as high as a million.

It is not clear if Virginia judgment creditors in this position could ever recoup the money owed to them. While judgment creditors such as credit unions may be able to vacate existing judgments and re-serve

the actions, they would incur substantial costs in doing so. This will make it economically inefficient to pursue collection of any number of smaller debts. Larger debts will be feasible to pursue, but it will be time-consuming and expensive to do so. The *Miserandino* decision will certainly "wreak havoc" on Virginia's judgment creditors holding judgments procured through this method. *Virginia Lawyer's Weekly*, Vol. XI, No. 39, p.21 (March 3, 1997).

The potential invalidation of perhaps hundreds of thousands of judgments will have the additional effect of generating clouds on title to parcels of real estate over which judgment creditors have liens. While it is not clear how many judgment creditors whose judgments may be invalidated have liens to real estate, real estate liens are

commonly used to attempt to enforce judgments. *Miserandino's* effects will be felt for years to come, and could generate costly and time-consuming title litigation. The status of title to much real estate could be unclear for years as attorneys attempt to remedy the damage done by *Miserandino*. The negative effects from *Miserandino* are not limited to judgment creditors, but will be felt by any number of potential buyers and sellers of real estate.

The result of the Maryland decision is that the Virginia business community, among others, suffers and many non-resident judgment debtors receive a windfall. It is unfair that non-residents such as the Miserandinos will be relieved of their debt burden despite the fact that they were accorded due process and, in most if not all instances, received actual notice of the

action against them. Moreover, the huge costs and losses incurred by Virginia credit unions will be passed down directly to the credit unions' over 3.5 million members. This is because credit unions are financial cooperatives, and each credit union member is credit union "owner."

As a practical matter, the Miserandino decision is a disaster for the Virginia business community. If allowed to stand, the decision essentially invalidates any number of existing judgments against non-residents. We urge the Supreme Court to grant a writ of certiorari to address the unanswered questions of whether or not Virginia's method of non-resident service of process is unconstitutional and if judgments obtained by this method should be accorded full faith and credit when the judgment debtor received actual notice of the action.

Conclusion

For the reasons set forth herein, we urge the Supreme Court to grant a writ of certiorari in this case and to reverse the decision below.

Respectfully submitted,

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MOTION FILED

JUL 30 1997

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MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* AND BRIEF OF THE VIRGINIA CREDITORS BAR ASSOCIATION IN SUPPORT OF THE COMMONWEALTH OF VIRGINIA'S PETITION FOR WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF VIRGINIA CREDITORS BAR ASSOCIATION IN SUPPORT OF THE COMMONWEALTH OF VIRGINIA'S PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice of the Supreme Court of the United States and the Associate Justices of the Supreme Court of

the United States:

Virginia Creditors Bar Association, by and through its counsel, Frank M. Feibelman, hereby moves this Court for leave to file its Brief *Amicus Curiae* in Support of the Commonwealth of Virginia's Petition For Writ of *Certiorari* in the above captioned case and in support of this motion states as follows:

1. Frank M. Feibelman is General Counsel and Treasurer of Virginia Creditors Bar Association and Counsel of Record for the Association.

2. Virginia Creditors Bar Association has requested written consent of both the Petitioners and Respondents to file a Brief *Amicus Curiae* in Support of the Commonwealth of Virginia's Petition For Writ of *Certiorari*. (Copy of letter dated June 20, 1997, attached hereto as Exhibit A.) However, to date consent has been received only by Andrew Polott, Counsel for Resort

Properties, Inc., and the Commonwealth of Virginia (copies attached hereto as Exhibits B and C, respectively). No response has been received from Benjamin Lipsitz, Attorney for respondents.

3. Pursuant to Rule 37.2(b) the Rules of this Court, the Virginia Creditors Bar Association's *Amicus Curiae* Brief is attached hereto and submitted herewith as one document.

4. The Virginia Creditors Bar Association is an independent Bar Association comprised of approximately 130 attorneys and law firms in Virginia, whose practices include creditors rights and the collection of all types of accounts, for all types of creditors from debtors, both within and without the Commonwealth of Virginia, who transact business within the Commonwealth of Virginia. Our interest is in preserving the sanctity of judgments already obtained against out of state

defendants, as well as in maintaining a low cost, efficient method of service of process to obtain jurisdiction over those individuals from other states who choose to transact business in the Commonwealth of Virginia.

WHEREFORE, it is respectfully requested that Virginia Creditors Bar Association's Motion For Leave To File Brief *Amicus Curiae* in Support of the Commonwealth of Virginia's Petition For Writ of *Certiorari* be granted.

Respectfully submitted,

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July 30, 1997

V C B A
VIRGINIA CREDITORS BAR ASSOCIATION
P.O. Box 12141 • Richmond, Virginia 23241

June 20, 1997

Mr. Lipsitz
100 Church Lane
Baltimore, MD 21208

Andrew W. Polott, Esquire
Poppleton, Garrett & Polott, P.C.
6430 Rockledge Drive, Suite 500
Bethesda, MD 20817

Dear Mr. Lipsitz and Mr. Polott:

Pursuant to Rule 37 of the RULES OF THE UNITED STATES SUPREME COURT, on behalf of the Virginia Creditors Bar Association, I respectfully request your consent to allow the Virginia Creditors Bar Association to file an amicus curiae brief in support of the Petition For Writ Of Certiorari in the Supreme Court.

I would appreciate your advising me in writing at my office address of P. O. Box 6857, Richmond, Virginia 23230-0857, of your decision.

I thank you in advance for your cooperation in this regard.

Very truly yours,

Jill S. Marks, President

JSM:pg

cc: A. Ann Berkebile, Assistant Attorney General
Ernest C. Vaughan, Vice President, VCBA
Robert P. Quadros, Secretary, VCBA

Frank M. Feibelman, Treasurer, VCBA
Frank DeGaetani, Esquire, Director, VCBA
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June 24, 1997

Jill S. Marks, President
Virginia Creditors Bar Association
P.O. Box 12141
Richmond, Virginia 23241

Dear Ms. Marks:

This will confirm the consent of our client, Resort Properties, Inc., to file an amicus curiae brief in support of the Petition for Writ of Certiorari in the Supreme Court by the Commonwealth of Virginia, which Petition we will join.

Please let me know if you need anything further.

Sincerely,

Andrew R. Polott

ARP/jm

cc: A. Ann Berkebile, Assistant Attorney General

COMMONWEALTH OF VIRGINIA

Office of the Attorney General
Richmond, 23219

Richard Cullen
Attorney General

900 East Main Street
Richmond, VA 23219
804-786-2071
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July 7, 1997

Jill Marks, Esquire
President
Virginia Association of
Collections Attorneys
Samuel, Pustilnik, and Marks
Post Office Box 6857
Richmond, Virginia 23230

Re: Miserandino v. Resort Properties-
Appeal to Supreme Court

Dear Jill:

As we discussed some time ago in our telephone conversation, the Commonwealth of Virginia, Intervenor/Petitioner in the case referred to above, consents to the filing of an amicus brief by the Virginia Association of Collections Attorneys in this case.

If you have any questions regarding the Commonwealth's consent, please do not hesitate to call.

Very truly yours,

A. Ann Berkebile
Assistant Attorney General

cc: Andrew R. Polott
Benjamin Lipsitz

aab\miserandinomarkslet

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No. 97-27

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1996

COMMONWEALTH OF VIRGINIA, EX REL,
SECRETARY OF THE COMMONWEALTH

Petitioner,

v.

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,

Respondents.

AMICUS CURIAE BRIEF ON BEHALF OF VIRGINIA CREDITORS BAR ASSOCIATION IN SUPPORT OF THE COMMONWEALTH OF VIRGINIA'S PETITION FOR WRIT OF CERTIORARI

I. PURPOSE

The Commonwealth of Virginia has petitioned this Honorable Court for a Writ of Certiorari in this cause for reasons stated more fully in its Petition filed on June 30, 1997. The purpose of this brief is

not to duplicate the efforts of the Commonwealth, but to augment them.

The Virginia Creditors Bar Association is an independent Bar association comprised of over 100 attorneys and law firms engaged in creditors' rights representation throughout the Commonwealth of Virginia. Clients include financial institutions, manufacturers, suppliers and other businesses which grant credit in intrastate and interstate commerce. Full faith and credit enforcement of judgments among states is of particular importance to them, and it is in the interest of our clients and our representation of them that this brief is submitted.

II. REASONS FOR GRANTING WRIT OF CERTIORARI

The Maryland Court of Appeals has, by its decision in this matter, declared the Commonwealth of Virginia's procedural mechanism for service on out of state

defendants unconstitutional for want of due process. The ramifications of this are enormous inasmuch as it calls into question the validity of thousands of judgments taken in Virginia against defendants who reside outside of the Commonwealth but who chose to do business and incur obligations here. Similarly vulnerable are judgments granted by Federal courts where this method of service of process was used. Until this issue is addressed by the United States Supreme Court, judgments thought by Virginia litigants to be inviolate are of dubious enforceability outside the bounds of the Commonwealth.

As long as the constitutionality of this method of service remains undecided at the highest national level, a Virginia attorney taking a judgment in accord with Virginia law against a nonresident faces not only the possibility of the judgment being invalid, but the apprehension of retaliatory

action under the Fair Debt Collection Practices Act (15 U.S.C. 1692, et seq.) or a state counterpart. Similarly, an attorney engaged to domesticate such a judgment outside of Virginia faces the same specter.

Experience indicates to our clients and membership that first class mail is more likely to reach the intended recipient than certified or registered mail. We have found that frequently such mail is returned "unclaimed" or "refused." Good news rarely comes via certified mail. This very point was made to the Virginia legislators when considering the mode of delivery to be required by the Secretary of the Commonwealth after service upon him as statutory agent. The Virginia General Assembly's determination of adequacy should not be subjected to the second-guessing of a Maryland Court.

III. CONCLUSION

To deny this Petition would allow the Maryland Court of Appeals to void Virginia statutes, thus substituting its judgment for the wisdom and decisions of the Virginia legislature and Supreme Court of Virginia in enacting and overseeing the laws of the Commonwealth. The full Faith and Credit clause of the United States Constitution would be rendered a nullity if individual states are allowed to pick and choose which other state's statutes they deem are constitutional. This determination must be made by the final arbitor of constitutionality, the United States Supreme Court.

This Court should grant the Commonwealth of Virginia's Petition for Writ of Certiorari.

Respectfully submitted,

VIRGINIA CREDITORS BAR
ASSOCIATION

Frank M. Feibleman, Esquire
3018 West Clay Street
Richmond, Virginia 23230
804 358-8486

A:\BRIEF

No. 97-27

Supreme Court, U.S.
FILED
JUL 31 1997
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

COMMONWEALTH OF VIRGINIA, ex rel.,
SECRETARY OF THE COMMONWEALTH, et al.,

Petitioners,

v.

GERARD P. MISERANDINO and
KAREN L. MISERANDINO,

Respondents.

On Petition for Writ of Certiorari
to the Court of Appeals of Maryland

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BENJAMIN LIPSITZ,
100 Church Lane
Baltimore, Maryland 21208
(410) 484-3050,
Counsel of Record for
Respondents

QUESTIONS PRESENTED FOR REVIEW

1. (a) Did the Commonwealth of Virginia validly acquire original *in personam* jurisdiction, in an action jurisdiction over the Miserandinos, who were residents of Maryland, in an action *ex contractu* brought against them by Resort in a Virginia court under a Virginia substituted service statute authorizing service of process upon nonresident defendants solely by means of first-class mailing to them of relevant notices by the Secretary of the Commonwealth as statutory agent, without any requirement for proof of actual delivery or receipt?

(b) Did proceeding against them in that manner deprive them of due process of law, judgment by default having been entered against them in the Virginia action when they failed to appear (and they having sworn in the Maryland case brought by Resort to enforce that default judgment that they never received notice or process in the Virginia case?

2. Need Maryland afford any faith or credit to a Virginia default judgment against Maryland residents, where acquisition of original personal jurisdiction over the non-resident defendants was sought to be premised solely upon ordinary first-class mailing to them of relevant notices, without any requirement for proof of actual delivery or receipt, and where, in a Maryland proceedings to enforce that judgment, the defendants stated under oath that they had not received such notices?

3. Does the Commonwealth of Virginia have standing in this Court to challenge the constitutional propriety of the

disposition made of this case by the Court of Appeals of Maryland, when the Commonwealth did not in any manner participate in proceedings below until after the Court of Appeals of Maryland filed its opinion, although prior to issuance of its mandate, when Virginia sought both leave to intervene, which it was permitted to do, and reconsideration of the Maryland court's decision, which was denied?

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STATEMENT OF THE CASE

Resort Properties, Inc. ("Resort"), as assignee of North Fork Shenandoah Vacations, Inc., obtained a judgment by default in the amount of $4,211.82 against Gerard P. Miserandino (who in the respective petitions for certiorari filed herein is incorrectly called "Gerald") Miserandino and Karen L. Miserandino, his wife, in the Warren County (Virginia) General District Court. In entering that default judgment the Virginia court sought to exercise long-arm personal jurisdiction over the Miserandinos, who were residents of Maryland, under a Virginia statute (Va. Code, Sec. 6.01-329), purporting to authorize service of process upon nonresidents by serving the Secretary of the Commonwealth, as statutory agent of such persons. The Secretary or his or her designee then is to send copies of the pertinent pleadings to a defendant's last known address, as set out in an affidavit to that effect supplied by the plaintiff, and is to certify that such papers have been sent. The Virginia statute requires neither actual delivery or receipt of the first-class mail nor any proof thereof.

Resort thereafter filed that default judgment in the Circuit Court for Carroll County, Maryland, where the Miserandinos resided, and the clerk of that court mailed them a notice advising that such filing had occurred. See Md. Code, Courts and Judicial Proceedings Article, Secs. 11-801-807 (1957, 1989 Repl. Vol., 1992 Cum. Supp.), which sets out Maryland's version of the Uniform Enforcement of Foreign Judgments Act. The Miserandinos moved to strike entry of

the foreign judgment, averring in part by affidavit made on personal knowledge that they were not served with process in, had no notice of, and did not appear in the Virginia action. The circuit court initially granted the Miserandinos' motion. Upon filing by Resort of a motion to alter or amend pointing out that in its order the court had cited the wrong statute, the court reheard the matter, reversed its ruling and recorded Resort's Virginia default judgment.

The Miserandinos appealed to the Court of Special Appeals, Maryland's intermediate appellate tribunal. That court affirmed, one member of its three-judge hearing panel dissenting. (The dissent asserted, in part, that it was not possible for either his court or the Virginia court to ascertain facially from the record in the case whether a prima facie factual basis was asserted in Virginia for proper invocation of its long arm statute.)

The Court of Appeals, Maryland's final appellate tribunal, granted certiorari. It declined, in part, to accept the proposition, embodied in the Virginia substituted service statute and advanced by Resort, that first-class mail service, without more, was sufficient to confer in personam jurisdiction upon the Virginia court. It hence declined to grant full faith and credit to the Virginia jydgment. It found that because of constitutional inadequacy of the notice authorized by the Virginia statute the Virginia court did not acquire personal jurisdiction over the Miserandinos.

Subsequent to filing (on February 12, 1997) of the Court of Appeals' opinion, but prior to issuance of its mandate, the Attorney General of Virginia petitioned

that court for leave to intervene in the Maryland case and moved for reconsideration of its decision. On April 8, 1997 the Court of Appeals permitted intervention, but denied reconsideration, and issued its mandate.

Throughout proceedings in the Maryland courts the Miserandinos consistently contended that the first-class mail notice procedure under the Virginia substituted service statute failed to confer personal jurisdiction over them upon the Virginia court and deprived them of due process of law. Resort effectively urged that its compliance with the Virginia statutory provisions for service upon nonresidents satisfied all constitutional requirements and afforded the Miserandinos ample notice and opportunity to defend in the Virginia case.

On or about April 21, 1997 Virginia filed in the Court of Appeals of Maryland its appeal to this Court (App. 68) and on July 1, 1997 filed in this Court its instant petition for a writ of certiorari in which Resort, the real party in interest below, simply joined, as "Co-Petitioner" by "adopt[ing] and incorporat[ing] by reference herein" (Petition for Writ of Certiorari by Co-Petitioner Resort Properties, Inc. at 1) the Petition for Writ of Certiorari and the Appendix thereto submitted by the Commonwealth of Virginia.

REASONS FOR DENYING THE WRIT

Petitioners seek review by this Court of a decision of Court of Appeals of Maryland, that state's court of last resort, which patently involves a substantial federal question. They have. however, the Miserandinos submit, failed to point out that (or how) the decision so

sought to be challenged conflicts with any decision of another state court of last resort, or a United States court of appeals, or relevant decisions of this Court. They seem, rather, to rest their request for review upon their contentions that the Court of Appeals of Maryland was simply wrong in its analyses and determinations bearing upon the service of process issue on which the case there turned and that consequences of the decision may, according to them, be of such general public importance that the issues involved should be settled by this Court.

The Miserandinos are constrained to respectfully disagree. The closely and well reasoned majority opinion below is supported by the record and deals fully and correctly with the service of process issue. The decision below ~~is~~ in any event limited to the validity in the State of Maryland only of a Virginia trial court's default judgment based upon that Commonwealth's substituted service statute and have no significant effect on substituted service statutes generally.

(1) The Virginia court lacked in personam jurisdiction and its proceedings deprived the Miserandinos of due process.

The Maryland decision in issue is perhaps one of first impression in that neither courts nor counsel participating in this matter to date appear to have found or cited another case specifically and directly deciding whether (as the issue was phrased by the Court of Appeals)

> ". . . initial and original service of process by first-class mail is constitutionally suffici-

ent to confer in personam jurisdiction over a nonresident individual in a long-arm jurisdiction case"

(App. 8-9) like the instant one, which is neither in rem nor quasi in rem in nature, but is aimed solely at recovery of money for alleged breach of contract. Cf., e.g., Mullane v. Central Hanover Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), holding (despite that the trust there involved consisted of numerous small similar interests, identical with a class, so that the risk that notice might not reach every beneficiary was justifiable, since notice reasonably certain to reach most of the beneficiaries was likely to safeguard the interests of all) that newspaper publication alone did not suffice to give notice to persons interested in certain trust funds, not because it would not in fact reach everyone, but because it was not reasonably calculated to reach those who could readily be informed by other available means); Greene v. Lindsey, 456 U.S. 444, 102 S.Ct. 1874, 72 L.Ed.2d 249 (1992), where in holding that a Kentucky statute permitting service of process in forcible entry and detainer cases by posting a summons on a tenant's apartment door, after only one effort was made to serve the tenant personally, did not satisfy minimum due process standards, this Court, though declining to decide the constitutional question there presented by determining if the particular action was one in rem or in personam, noted that it was not saying that the nature of an action has no bearing "on a constitutional assessment of the reasonableness of the procedures involved" (456 U.S. at

450); Tulsa Professional Collection Service v. Pope,485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988), in which, where a creditor's assignee's claim for hospital expenses incident to a decedent's last illness had been barred because not presented within two months of newspaper notice of commencement of probate proceedings, this Court repeatedly acknowledged the need for "actual notice" (108 S.Ct. at 1347), did not at all specifically approve ordinary mailing, but noted its recognition of "mail service" (Id.) (a term which would not appear to be limited to first-class mail alone, but to encompass certified or registered (including return receipt requested) mailing as well, and concluded that, if the creditor's identity was known or reasonably ascertainable, termination of its claim without actual notice violated due process.

It may also be of some interest that in the case, Basile v. American Filter Service, Inc., 231 Va. 34 (1986), relied upon by Resort in the lower courts as conclusively establishing the validity of the Virginia substituted service statute, the critical mailings involved, though undelivered, were made not by ordinary, but by certified mail, return receipt requested. 231 Va. at 36. Attribution of constitutional, or jurisdictional, adequacy to the ordinary mail procedure permitted by the Virginia substituted service statute without regard to actual delivery or receipt of such mail was properly declined (particularly perhaps in light of the Miserandinos' categorical denial under oath of receipt of the mailing said to be involved, opposed in the record only by an unverified certificate of mailing provided by a designee of

the Secretary of the Commonwealth of Virginia) by the Court of Appeals of Maryland and was thus correctly refused recognition in that State.

It follows from its rejection of the Virginia method of securing personal jurisdiction over nonresident defendants that the Court of Appeals of Maryland was acting well within its prerogatives in refusing full faith and credit to the Virginia judgment. A Maryland court in which a foreign judgment is sought to be enforced is to make its own independent determination of jurisdictional and due process issues affecting the validity of that judgment. Imperial Hotel, Inc. v. Bell Atlantic Tri-Con Leasing Corporation, 91 Md.App.266, 603 A.2d 1371, 1374, 1375 (1992). Without valid service of appropriate notice, which is an essential prerequisite to attachment of in personam jurisdiction and a sine qua non of due process, personal jurisdiction is totally lacking and a judgment entered in Virginia in that circumstance, as occurred in the instant case, constitutes a deprivation of due process and is entitled to no faith, credit or enforcement in Maryland, since absent proper service the Virginia court had no power, i.e. had no jurisdiction, to render the judgment. Cf. Underwriters National Insurance Co. v. North Carolina Life and Accident and Health Insurance Guaranty Assoc., 455 U.S. 691, 704, 102 S.Ct. 1357, 1365, 71 L.Ed.2d 558 (1982); Durfee v. Duke, 375 U.S. 106, 110, 84 S.Ct. 242, 244, 11 L.Ed.2d 186 (1963). See also Griffin v. Griffin, 327 U.S. 320, 66 S.Ct. 556, 90 L.Ed. 665, reh. den. 328 U.S. 876, 66 S.Ct. 975, 90 L.Ed. 1645 (1966); World-Wide Volkwagen Corp. v. Woodson, 444 U.S.

286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); Van Wagenberg v. Van Wagenberg, 241 Md. 154, 215 A.2d 812 (1966); Imperial Hotel, supra.

(2) The decision of the Court of Appeals of Maryland does not generally invalidate the Virginia substituted service statute or a similar statute of any other state, but is limited to the application of the Virginia statute to residents of Maryland.

The decision of the Maryland court of last resort is not as pervasive as petitioners seek to make it appear. Of all the fifty states presently comprising the United States, the Attorney General of Virginia appears to have been able to find only one, Minnesota, with a statute he considers sufficiently similar to Virginia's to require or warrant his notifying the Attorney General of that state that its statute may be drawn into question by the instant proceeding. See Virginia's Petition for Writ of Certiorari at 1-2. That hardly seems to present the supposed threat to the constitutional adequacy "of numerous statutes, both state and federal" (Id. at 18) (none of which are described or cited, however, as constituting a method of acquiring original personal jurisdiction) to which Virginia endeavors to allude.

The Court of Appeals of Maryland clearly and carefully limited the scope and reach of its decision solely to the effect to be accorded the Virginia judgment in Maryland. For example, it concluded its opinion by stating:

> "Accordingly, although the judgment may remain valid where entered until there is a contrary

> ruling by a court of competent jurisdiction, we decline to grant full faith and credit to the judgment because of our finding that the Virginia trial court did not acquire personal jurisdiction over these defendants because of the constitutional inadequacy of notice." (App. 29).

That language scarcely seems likely "to 'wreak havoc' on creditors' practice in Virginia" (Virginia's Petition for Writ of Certiorari at 5) or elsewhere. It seems, rather, to clearly indicate an admirable intent to confine the effect of the Maryland court's ruling solely to the efficacy of the Virginia ordinary mail procedure for service on nonresidents as sought to be applied to residents of Maryland. It does not raise the sort of nationwide "threat" to statutes of other states that Virginia (apparently in an effort to attract the attention of this Court) seeks to imply arises from it. It is a well founded and sound decision. It leaves the Virginia statute and the procedure thereunder intact in that Commonwealth. It makes no effort to affect the impact, if any, of either the Virginia statute or the Maryland decision on any other state. It does not create a situation of national public importance. It does not require review by this Court.

(3) Virginia should not be accorded standing to challenge the Maryland decision in this Court.

Virginia, having participated only marginally in the court below - and then only after the opinion setting out its decision was filed - and having suffered no actual loss or damage (as opposed to

mere unestablished fanciful, conceivable, supposed or speculative potentialities) from or as a result of the Maryland decision, ought not to be accorded standing to attack that decision in this Court. Virginia has neither suffered nor demonstrated any actual injury. Its Attorney General complains of what he fears to be the alleged potentiality of that decision, according to him, to "wreak havoc on the enforceability of Virginia judgments in Maryland and across the country" (Virginia's Petition for Writ of Certiorari at 18). apparently premised upon his earlier reference to a news item appearing in a Virginia weekly newspaper (Id. at 7), but offers no specific or concrete instances where that or anything like that happened. That the Commonwealth of Virginia, or its Attorney General (or collection lawyers or agencies there), may be disturbed by mere fears that the Maryland decision may make their activities more burdensome would not seem to amount to any actual injury qualifying Virginia for standing in this case (or, for that matter, presenting any valid reason for this Court's intervention).

It has been held by this Court that the constitutional dimension of standing theory requires that there at least be an "'actual injury redressable by the court'", Director, Office of Workers Comp. Programs v. Perini North River Assocs., 429 U.S. 297, 305, 103 S.Ct. 634, 640, 74 L.Ed.2d 465 (1963), quoting from Simon v. Eastern Kentucky Welfare Org., 426 U.S. 26, 39, 96 S.Ct. 1917, 1924, 48 L.Ed.2d 450 (1976). And it appears that standing to appeal is a pertinent issue to be presented to an

appellate court. See Bryant v. Yellin, 447 U.S. 352, 366-68 and nn. 17, 18, 100 S.Ct. 2232, 2240 and nn. 17, 18, 65 L.Ed.2d 184 (1980), where residents of Imperial Valley, California, filed an appeal as intervenors from a district court decision in an action in which the United states, as plaintiff, unsuccessfully sought a declaration that irrigation water could not be used for landholdings larger than 160 acres. After the district court ruled against the United states, which forwent an appeal, the intervenors, most of whom were farm workers, were accorded standing for purposes of appeal on the basis that if the limit on irrigation were upheld, large landholders would sell excess land and would be required by an applicable statute to do so at prices far below market value, so that the intervenors, who desired to purchase such land for farming, would benefit from the resulting windfall. The Miserandinos respectfully submit that the intervenors in Bryant thus had a far more specific and concrete basis for intervention than is established in this case by Virginia's mere fears and that both the constitutional and the prudential restrictions applicable to standing issues militate against recognizing standing on the part of Virginia to pursue its appeal in this case. In addition to the circumstance that Virginia has sustained no actual damage, its last minute, post-decisional intervention effectively has given Resort, the real party in interest opposing the Miserandinos, a "free ride", as perhaps is amply illustrated by comparing the 23 page petition for certiorari, accompanied by a 263 page

appendix, submitted by Virginia with the one page "piggyback" petition filed by Resort. The Miserandinos, while they certainly do not quarrel with the concept that all are equal before the law, regardless of the extent of their respective assets, respectfully suggest that Virginia's presence only exacerbates an already substantial financial imbalance in Resort's favor, as compared to them, with respect to ability to continue this already relatively protracted litigation. That, they suggest, perhaps warrants attention as a possible prudential consideration in determining Virginia's status with respect to standing.

CONCLUSION

For the reasons stated herein, this case does not merit further review by this Court and the respective Petitions for Writ of Certiorari filed by Virginia and by Resort should be denied.

Respectfully submitted,

BENJAMIN LIPSITZ,
Counsel of Record
for Respondents